

# **A G E N D A**

## **REGULAR MEETING**

### ***Governing Board of the Alameda Corridor Transportation Authority***

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|   |  |
|---|--|
| Meeting Date:   | February 2, 2023   |
| Time:   | 10:00 A.M.   |
| Location:   | This meeting is being conducted via teleconference in accordance with Assembly Bill No. 361 approved by Governor Newsom on September 16, 2021, and Government Code Section 54953(e)(1).<br>A physical location will not be available for public observance of the meeting or public comment. |
| Conference Call for Meeting Attendance and Live Public Comment. | Dial: (562) 342-1138<br>Participant Pin: 2178101#  |
| Written Public Comment about Agenda Items.                      | Email: <a href="mailto:PublicComment@acta.org">PublicComment@acta.org</a><br>Sender's name and contact information are appreciated.  |

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This meeting is being held in accordance with the Brown Act as currently in effect under Assembly Bill No. 361 approved by Governor Newsom on September 16, 2021, and Government Code Section 54953(e)(1) that allows attendance by members of the Governing Board, ACTA staff, and the public to participate and conduct the meeting by teleconference, video conference, or both.


#### **A. ROLL CALL**

#### **B. OPENING STATEMENT**

Members of the public may join the meeting using the conference call number set forth on the agenda and may provide public comment on any agenda item. Live public comments will be heard no later than when each item is considered by the Governing Board. Each public speaker will be limited to three minutes to comment on each agenda item.

Any public comment received by email prior to the agenda item being called will be read into the record, limited to three minutes; any email received after an item has been considered by the Governing Board, but before the end of the meeting will be included in the minutes of the meeting, limited to one page.

The Governing Board may consider and act upon items as set forth on the agenda. Ordinarily, the Governing Board will not act on any matter which does not appear on the published agenda.



**C. AGENDA ITEMS****Reports:**

1. INFORMATION November 2022 Performance Report

**Consent Agenda:**

2. APPROVE Minutes of the January 5, 2023, Special Board Meeting of the Alameda Corridor Transportation Authority
3. RECEIVE AND FILE Financial Reports for November 2022
4. APPROVE Resolution No. JPA 23-3 authorizing teleconference, in-person, or hybrid meetings for the ACTA Governing Board and its Audit Committee pursuant to AB 361

**Regular Agenda:**

5. APPROVE Agreements for On-Call Trash Removal Services with NRC Environmental Services, Inc.; Ocean Blue Environmental Services, Inc.; Screamin Eagle Services, Inc.
6. APPROVE First Amendment to Agreement No. C0899 with Union Pacific Railroad for reimbursement of costs on Dolores Yard construction to consider increased costs
7. INFORMATION on 2024 Preliminary Budget Schedule
8. INFORMATION on 2023 Emergency Drill Exercise
9. Presentation to Los Angeles City Councilperson Joe Buscaino for Recognition of completed service as a Board member of Alameda Corridor Transportation Authority Governing Board

**D. PUBLIC COMMENT ON NON-AGENDA ITEMS****E. CLOSED SESSION**

NONE

**ADJOURNMENT**

As a covered entity under Title II of the Americans with Disabilities Act, the Alameda Corridor Transportation Authority (ACTA) does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities. Sign language interpreters, assistive listening devices, and translation services may be provided. To ensure availability, 72-hour advance notice is required. Contact the ACTA Office at (562) 247-7777.

# *Item 1*

## **Performance Report November 2022**

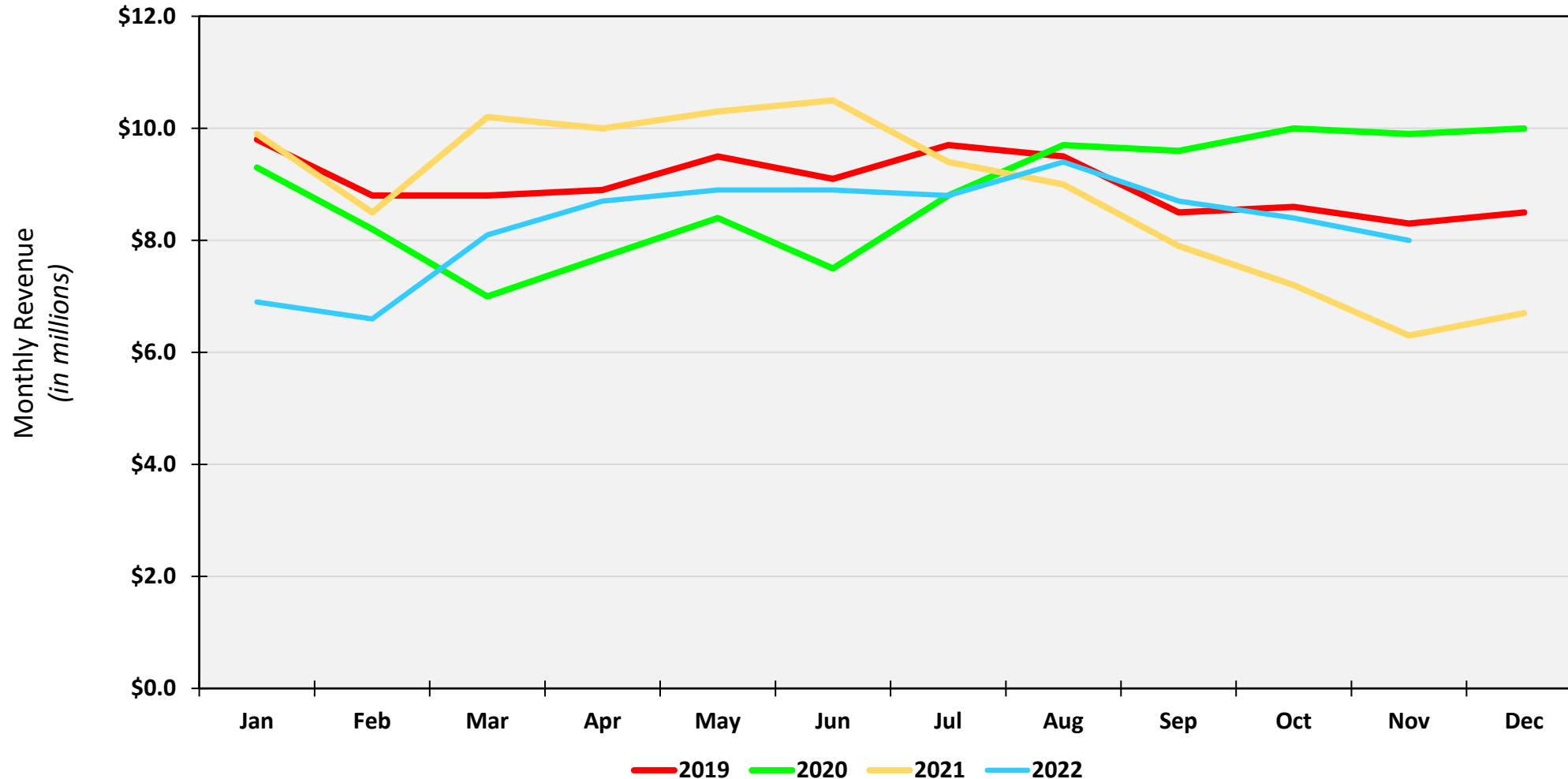
## Port Container Throughput (TEUs) – November 2022

|                     | POLA             |                | POLB             |                | Combined          |                |
|---------------------|------------------|----------------|------------------|----------------|-------------------|----------------|
|                     | Nov-22           | %Change*       | Nov-22           | %Change*       | Nov-22            | %Change*       |
| <b>Imports</b>      | 307,080          | - 23.9%        | 259,442          | - 28.4%        | 566,522           | - 26.0%        |
| <b>Exports</b>      | 90,116           | 8.9%           | 124,988          | 13.8%          | 215,104           | 11.7%          |
| <b>Total Loaded</b> | <b>397,196</b>   | <b>- 18.3%</b> | <b>384,430</b>   | <b>- 18.6%</b> | <b>781,626</b>    | <b>- 18.4%</b> |
| <b>Empty</b>        | 242,148          | - 25.6%        | 204,313          | - 25.2%        | 446,461           | - 25.4%        |
| <b>Total</b>        | 639,344          | - 21.2%        | 588,743          | - 21.0%        | 1,228,087         | - 21.1%        |
|                     |                  |                |                  |                |                   |                |
|                     | YTD              | %Change*       | YTD              | %Change*       | YTD               | %Change*       |
| <b>Imports</b>      | 4,623,689        | - 9.8%         | 4,117,147        | - 2.5%         | 8,740,836         | - 6.5%         |
| <b>Exports</b>      | 1,090,567        | - 2.0%         | 1,299,101        | - 1.9%         | 2,389,668         | - 2.0%         |
| <b>Total Loaded</b> | <b>5,714,255</b> | <b>- 8.4%</b>  | <b>5,416,248</b> | <b>- 2.4%</b>  | <b>11,130,503</b> | <b>- 5.6%</b>  |
| <b>Empty</b>        | 3,468,032        | - 5.0%         | 3,173,306        | 2.9%           | 6,641,338         | - 1.4%         |
| <b>Total</b>        | 9,182,287        | - 7.2%         | 8,589,554        | - 0.5%         | 17,771,841        | - 4.0%         |

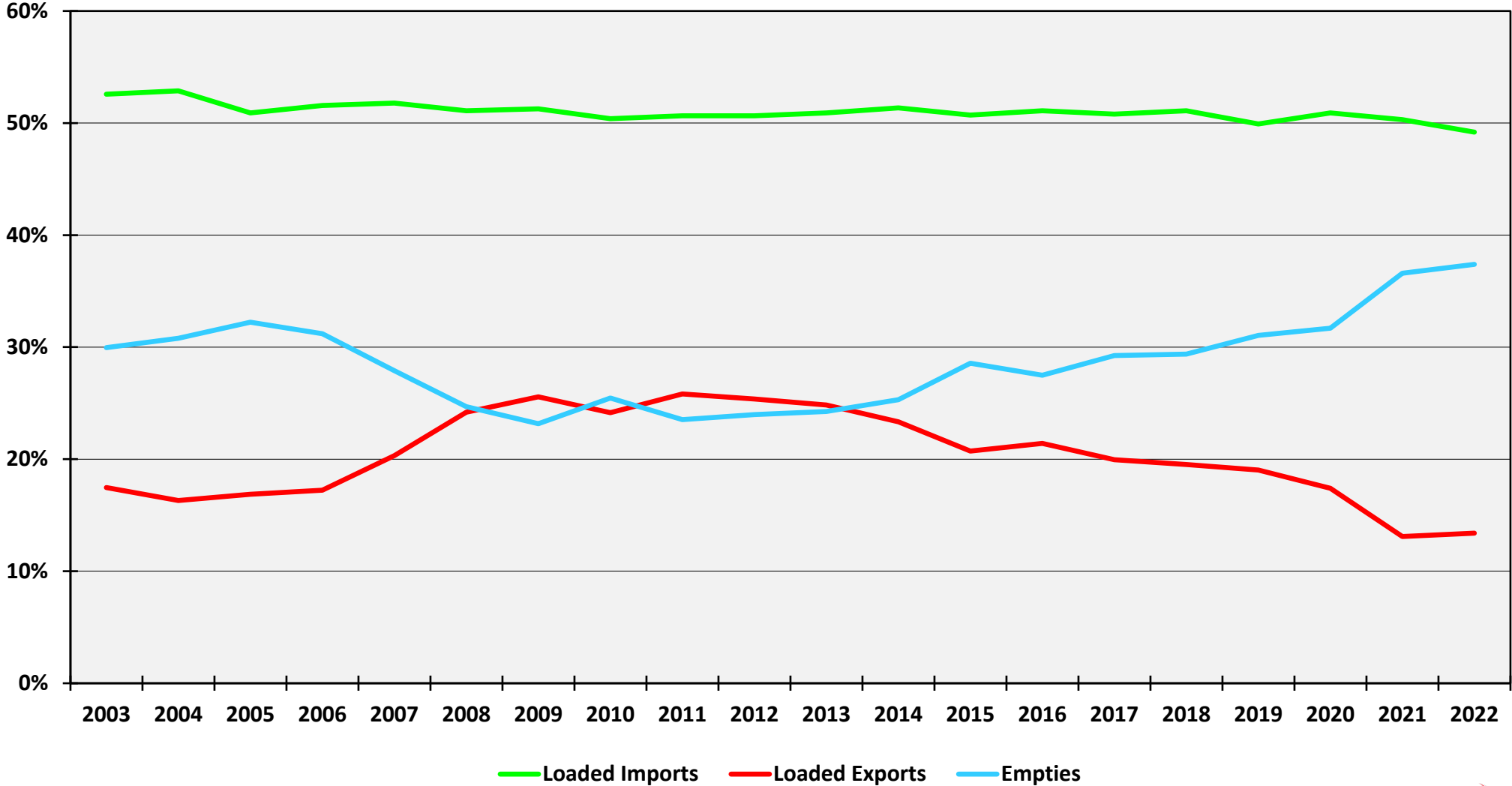
## Alameda Corridor Performance November 2022

|                  | Nov 2022 | CY22      | FY23      |
|------------------|----------|-----------|-----------|
| <b>Revenue</b>   | \$8.0 M  | \$91.4 M  | \$43.4 M  |
| Change from 2021 | 27.7 %   | - 7.9 %   | 8.7 %     |
| <b>TEU's</b>     | 380,383  | 4,366,912 | 2,124,172 |
| Change from 2021 | 23.4 %   | - 9.3 %   | 6.3 %     |

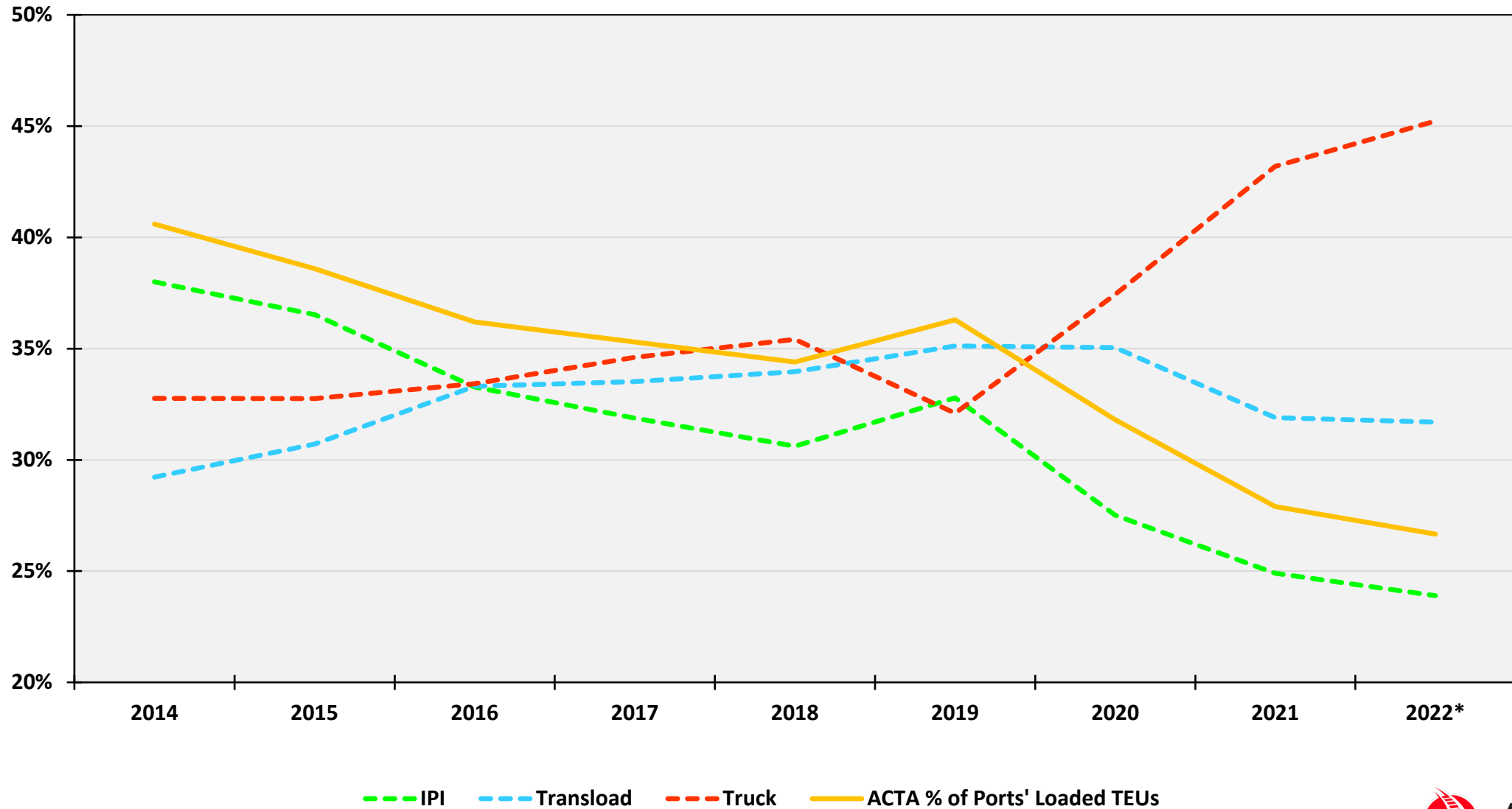
# Corridor Revenue Performance CY2019, CY2020, CY2021 & YTD 2022



# Port Cargo Components



# Port Cargo Mode Split



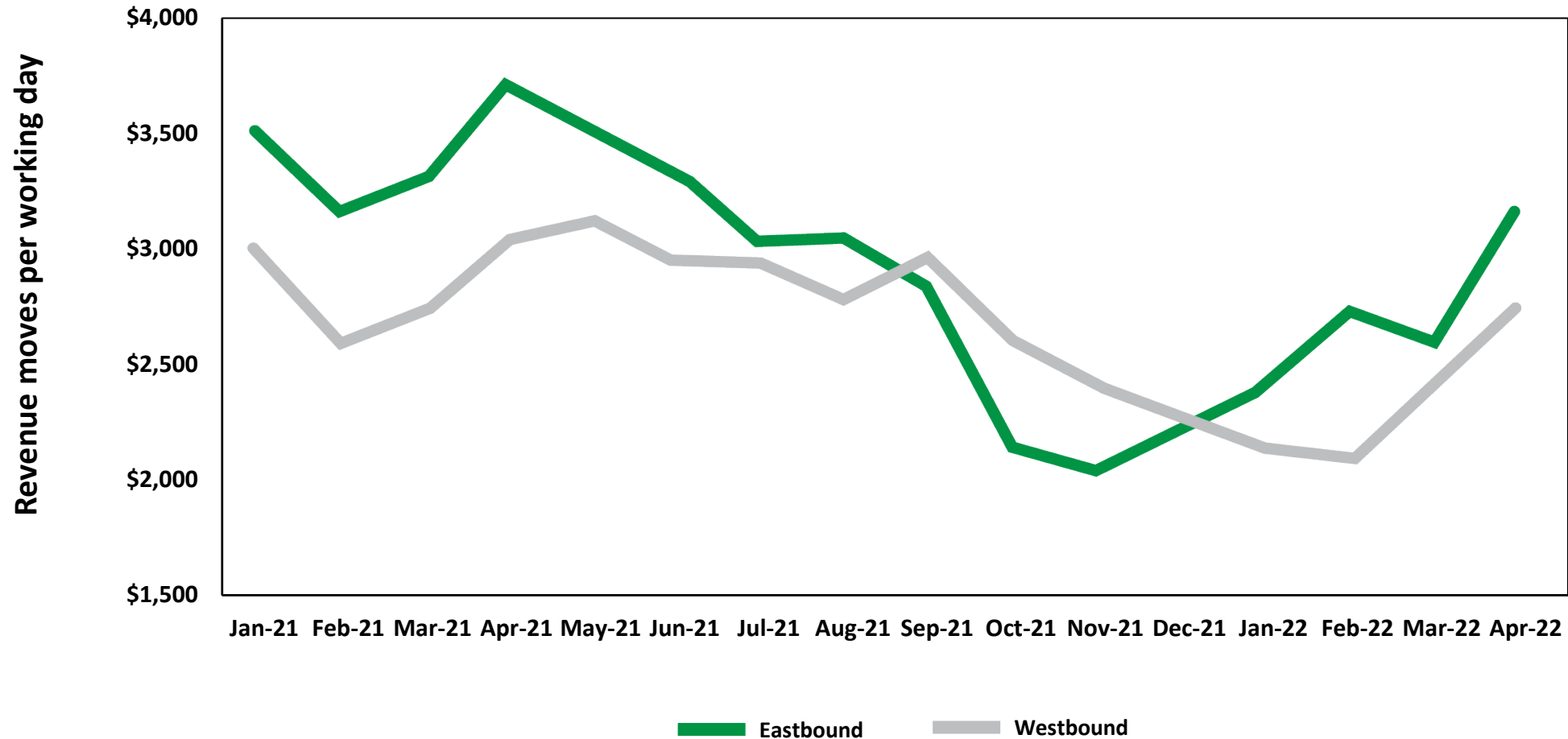
\* 2022 values are calculated using actual values through Sep 2022; Oct, Nov & Dec are forecast



# Ocean Carrier Influence

## Eastbound IPI moves show ocean carrier grip on market

IPI revenue moves per working day US Southwest and Midwest



MINUTES OF A SPECIAL MEETING OF THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY GOVERNING BOARD HELD ON JANUARY 5, 2023 AT 3:00 P.M. VIA TELECONFERENCE IN ACCORDANCE WITH ASSEMBLY BILL NO. 361 SIGNED BY GOVERNOR NEWSOM ON SEPTEMBER 16, 2021 AS GOVERNMENT CODE SECTION 54953(e)(1)

**A. ROLL CALL**

Members participating via teleconference:

Michael Cano, Los Angeles County Metro  
Frank Colonna, Port of Long Beach  
Mario Cordero, Port of Long Beach  
Tim McOsker, City of Los Angeles  
Edward Renwick, Port of Los Angeles

Alternate Members participating via teleconference:

Tony Gioiello, Port of Los Angeles

Alternate Members absent:

Mary Zendejas, City of Long Beach

Also participating via teleconference:

Michael Leue, ACTA, Chief Executive Officer  
Kevin Scott, ACTA, Chief Financial Officer  
Heather McCloskey, Co-General Counsel  
Thomas Oh, ACTA, Co-General Counsel  
Maria Melendres, ACTA, Governing Board Secretary

**B. OPENING STATEMENT**

CHAIR MCOSKER PRESIDED AS CHAIR.

The meeting was called to order at 3:06 p.m. The opening statement was read into the record.

**C. AGENDA ITEMS**

**Consent Agenda**

1. MINUTES - ACTA GOVERNING BOARD SPECIAL MEETING OF DECEMBER 8, 2022 – APPROVED.

Minutes of the Special Meeting of December 8, 2022, of the Governing Board of the Alameda Corridor Transportation Authority, were presented to the Governing Board.

2. MONTHLY FINANCIAL REPORTS AS OF OCTOBER 2022 FINANCIAL REPORT – RECEIVED AND FILED.

Communication from Kevin L. Scott, Chief Financial Officer, dated January 5, 2023, recommending that the monthly financial reports as of October 31, 2022, be received and filed, was presented to the Governing Board.

3. RESOLUTION NO. JPA 23-1 – TELECONFERENCE MEETINGS – GOVERNING BOARD AND AUDIT COMMITTEE – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated January 5, 2023, recommending that the Board approve Resolution No. JPA 23-1 authorizing the ACTA Governing Board and its Audit Committee to continue to hold teleconference meetings due to the COVID-19 pandemic, was presented to the Governing Board.

No public comment was received on the Consent Agenda.

Board Member Colonna motioned, seconded by Board Member Cordero that Item Nos. 1 & 3 be approved as recommended and Item No. 2 be received and filed. Roll call was taken and carried by the following vote:

AYES: Cano, Colonna, Cordero, Gioiello, McOsker, Renwick

NOES: None

ABSENT: Zendejas

**Regular Agenda**

4. RESOLUTION NO. JPA 23-2 – 2023 GOVERNING BOARD MEETING SCHEDULE – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated January 5, 2023, recommending that the Board approve Resolution No. JPA 23-2 authorizing the 2023 Governing Board meeting schedule, was presented to the Governing Board.

No public comment was received on Item No. 4.

Board Member Renwick motioned, seconded by Chair McOsker that Item No. 4 be approved as recommended. Roll call was taken and carried by the following vote:

AYES: Cano, Colonna, Cordero, Gioiello, McOsker, Renwick

NOES: None

ABSENT: Zendejas

5. PFM FINANCIAL ADVISORS LLC – SIXTEENTH AMENDMENT TO AGREEMENT NO. C0637 – FINANCIAL ADVISORY SERVICES – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated January 5, 2023 and presentation by Kevin L. Scott, Chief Financial Officer recommending the approval of the proposed Sixteenth

Amendment to Agreement No. C0637 with PFM Financial Advisors LLC to extend the agreement term by 6 months to August 28, 2023, was presented to the Governing Board.

No public comment was received on Item No. 5.

Board Member Cordero motioned, seconded by Board Member Renwick that Item No. 5 be approved as recommended. Roll call was taken and carried by the following vote:

AYES: Cano, Colonna, Cordero, Gioiello, McOsker, Renwick

NOES: None

ABSENT: Zendejas

6. RAILWORKS TRACK SERVICES, LLC – CONTRACT TASK ORDER NO. 8 FOR FLAGGING SERVICES AGREEMENT NO. C0885 – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated January 5, 2023, recommending the approval of Contract Task Order No. 8 under Agreement No. C0885 with RailWorks Track Services, LLC, for payment costs in the amount of \$231,750 for flagging services on the Dolores Yard OH-Bridge #53-1168 (DOT #921636D) and authorize the Chief Executive Officer or his designee to execute Contract Task Order 8, was presented to the Governing Board.

No public comment was received on Item No. 6.

Board Member Gioiello motioned, seconded by Board Member Renwick that Item No. 6 be approved as recommended. Roll call was taken and carried by the following vote:

AYES: Cano, Colonna, Cordero, Gioiello, McOsker, Renwick

NOES: None

ABSENT: Zendejas

7. FIRST AMENDED FY2023 OPERATING BUDGET – UPDATE CERTAIN EXPENDITURE AND REVENUE ITEMS – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated January 5, 2023, recommending the approval of the First Amended FY2023 Operating Budget to increase the amount of Pass-Through Expenses by \$1,038,788 and, since there are reimbursable costs, to increase revenues by an equal amount and transfer \$47,000 from ACET Administrative Support to Professional Services, was presented to the Governing Board.

No public comment was received on Item No. 7.

Board Member Renwick motioned, seconded by Board Member Cordero that Item No. 7 be approved as recommended. Roll call was taken and carried by the following vote:

AYES: Cano, Colonna, Cordero, Gioiello, McOsker, Renwick

NOES: None

ABSENT: Zendejas

#### **D. PUBLIC COMMENT ON NON-AGENDA ITEMS**

There were no requests by the public to address the Governing Board.

**E. CLOSED SESSION**

None


**ADJOURNMENT**

At 3:33 p.m., the meeting was adjourned sine die.

# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board  
Meeting Date: February 2, 2023  
From: Kevin L. Scott, Chief Financial Officer   
Subject: RECEIVE AND FILE Monthly Financial Reports as of November 30, 2022

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### **Recommendation:**

Receive and file the Monthly Financial Reports as of November 2022.

### **Discussion:**

The financial package includes the following:

- Executive Summary – Monthly key financial activity (See Transmittal 1).

Performance Comparisons – Current Month (November) and year-to-date (both by fiscal year and calendar year) of **Revenue** (corridor use fee) and corresponding **TEU** information; **Change** is compared to prior year actuals by month, fiscal year and calendar year.

Use Fees and Container Charges – Use fee and container charge information is provided in a bar chart by fiscal year. The current year shows the actuals to date overlain on the approved fiscal year budget, and with a notation of the latest forecast for fiscal year revenue.


- Monthly Financial Statements (See Transmittal 2).

Statements of Net Position - Unaudited statement of ACTA's assets and liabilities as of November 30, 2022. The audited June 30, 2022 financial information is also included for comparative purposes to the beginning of the fiscal year.

Statement of Revenues, Expenses and Changes in Net Position – Fiscal Year 2023 unaudited statement of revenues, expenses, and changes in net position through November 30, 2022. Also included is the statement as of November 2022 which has been included for comparative purposes for five months of information.

Comparison of Budget Functional Expenses–Operating Budget by Expense Type - The fiscal year-to-date budget is compared to actual revenue and expenditures incurred as of November 30, 2022.

Comparison of Budget Functional Expenses–Operating Budget by Funds - The fiscal year-to-date budget is compared to actual revenue and expenditures incurred as of November 30, 2022.



Cash and Investment Summary – Cash and investment balances and the corresponding investment schedule are being presented as of November 30, 2022. The cash and investment balances are segregated by institution, account number reference, and account description. Balances are presented in book and market value. Also included are the grant funds received for the SR-47 project during the current fiscal year. The investment schedule summarizes the composition of the agency’s investment portfolio and how the portfolio complies with the Board approved Investment Policy.

Cash Flow – Cash flow for the month of November 2022 is presented. It is presented in both a summary format and a detailed format. A fiscal year-to-date cash flow showing all activity through November 30, 2022 is also presented in both a summary format and a detailed format. The dollar amounts represent the book values for each account.

**Co-General Counsel Review:**

ACTA’s Co-General Counsel has reviewed this Board Report and there are no legal issues at this time.

**Transmittals:**

Transmittal 1 - Executive Summary – Key financial activity

Transmittal 2 - Monthly Financial Statements as of November 30, 2022

# ***Key Financial Activity***

## ***November '22 vs. '21***



# Corridor Performance

## *November '22 vs. '21*

### *Railroad Self-Assessment Revenue*

|                                   | '22      | '21      | Change  |
|-----------------------------------|----------|----------|---------|
| November Revenue                  | \$8.0 M  | \$6.3 M  | 27.7 %  |
| Calendar Year to Date (Jan-Nov) * | \$91.4 M | \$99.3 M | - 7.9 % |
| Fiscal Year to Date (July-Nov) *  | \$43.3 M | \$39.9 M | 8.7 %   |

\* Note: Does not include reconciliations / adjustments for fiscal year-end.

# Corridor Volumes

**November '22 vs. '21**

TEUs (Daily Containers)

## *Operations – On Corridor*

|                       | '22               | '21               | Change  |
|-----------------------|-------------------|-------------------|---------|
| TEU's *               | 370,339 (6,708)   | 299,352 (5,422)   | 23.7 %  |
| Calendar Year to Date | 4,217,178 (6,861) | 4,593,058 (7,472) | - 8.2 % |
| Fiscal Year to Date   | 2,052,541 (7,289) | 1,919,464 (6,817) | 6.9 %   |

## *Operations – Around Corridor (Container Charges)*

|                       | '22           | '21           | Change   |
|-----------------------|---------------|---------------|----------|
| TEU's *               | 10,043 (182)  | 8,833 (160)   | 13.7 %   |
| Calendar Year to Date | 149,734 (244) | 222,327 (362) | - 32.7 % |
| Fiscal Year to Date   | 71,631 (254)  | 79,178 (281)  | - 9.5 %  |

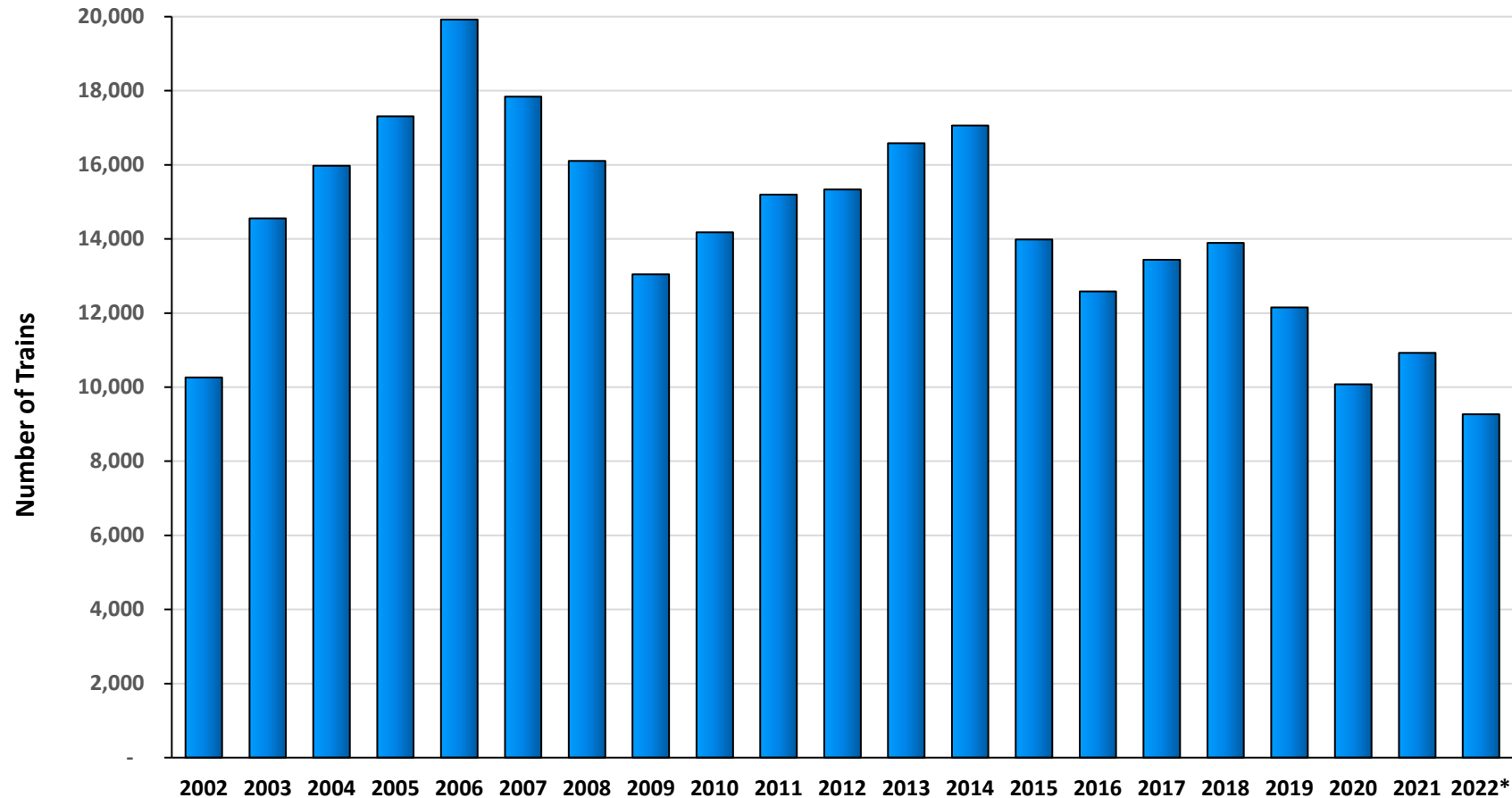
## *Operations – Combined*

|                       | '22               | '21               | Change  |
|-----------------------|-------------------|-------------------|---------|
| TEU's *               | 380,383 (6,889)   | 308,184 (5,582)   | 23.4 %  |
| Calendar Year to Date | 4,366,912 (7,104) | 4,815,384 (7,834) | - 9.3 % |
| Fiscal Year to Date   | 2,124,172 (7,544) | 1,998,642 (7,098) | 6.3 %   |

Note: Numbers in ( ) are the Average Daily Containers, Daily TEU's ÷ 1.82 = Containers

\* Containers trucked to off-dock intermodal yards that are charged ACTA fee

# Alameda Corridor Train Counts



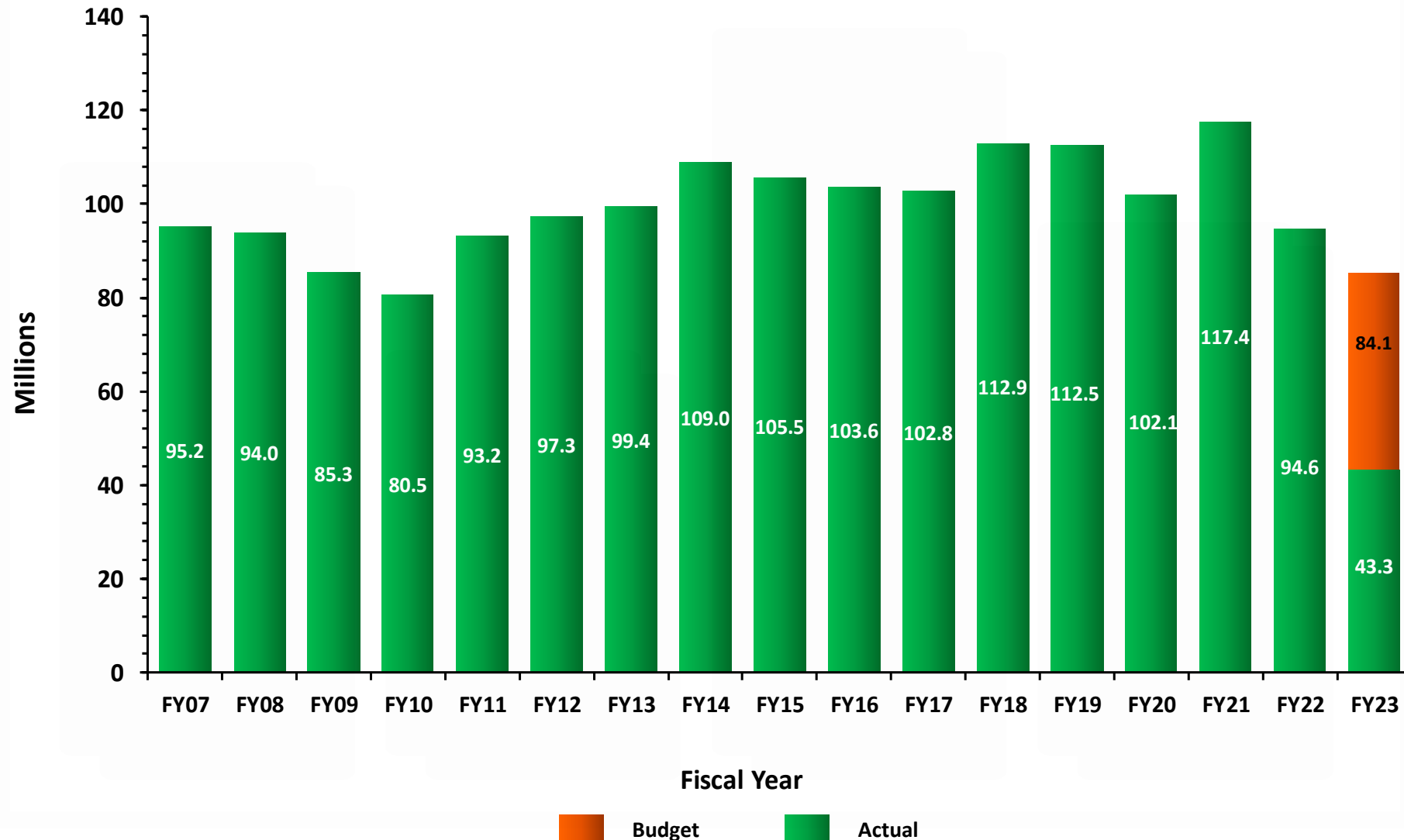
Average Daily Trains\*\*:

| <u>2002</u> | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 39          | 40          | 44          | 47          | 55          | 49          | 44          | 36          | 39          | 42          | 42          |
| <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> | <u>2021</u> | <u>2022</u> |             |
| 45          | 47          | 38          | 34          | 37          | 38          | 33          | 28          | 30          | 28          |             |

- Calendar Year-to-Date
- \*\* Corridor Capacity 150 Trains per Day

# Use Fees & Container Charges

as of November 30, 2022





# Statements of Net Position

## November 30, 2022 & June 30, 2022

|   | November 2022           | June 2022               |
|---|-------------------------|-------------------------|
| <b>Assets &amp; Deferred Outflows of Resources</b>                          |                         |                         |
| <b>Current Assets:</b>  |                         |                         |
| Restricted Cash & Cash Equivalents, & Investments                           | \$ 59,477,313           | \$ 112,642,434          |
| Receivables   | 10,843,128              | 14,097,414              |
| Prepaid Expenses  | 811,328                 | 1,509,733               |
| <b>Total Current Assets</b>   | <b>71,131,769</b>       | <b>128,249,581</b>      |
| Restricted Investments *  | 99,225,735              | 51,156,921              |
| Assets Held for Transfer  | 3,182,825               | 3,182,825               |
| Net OPEB Asset  | 556,666                 | 556,666                 |
| Capital Assets Not Being Depreciated  | 438,148,732             | 438,148,732             |
| Capital Assets, Net   | 1,046,712,581           | 1,055,509,055           |
| <b>Total Assets</b>   | <b>1,658,958,308</b>    | <b>1,676,803,780</b>    |
| <b>Deferred Outflows of Resources:</b>                                      |                         |                         |
| Charges on Refunding  | 48,523,417              | 12,344,243              |
| Pension Contributions & Differences in Experience                           | 837,109                 | 837,109                 |
| <b>Total Assets &amp; Deferred Outflows of Resources</b>                    | <b>\$ 1,708,318,834</b> | <b>\$ 1,689,985,132</b> |
| <b>Liabilities, Deferred Inflows of Resources, &amp; Net Position</b>       |                         |                         |
| <b>Current Liabilities:</b>   |                         |                         |
| Accounts Payable  | \$ 3,260,277            | \$ 8,018,917            |
| Unearned Revenue  | 5,487,233               | 2,402,881               |
| Accrued Interest Payable, Current Portion                                   | 8,365,815               | 40,588,101              |
| Revenue Bonds Payable, Current Portion                                      | 26,983,264              | 37,813,264              |
| Other Liabilities   | 478,706                 | 533,837                 |
| <b>Total Current Liabilities</b>  | <b>44,575,295</b>       | <b>89,357,000</b>       |
| <b>Noncurrent Liabilities:</b>  |                         |                         |
| Collateral Deposit  | -                       | -                       |
| Shortfall Advances Payable to Ports   | 12,659,747              | 12,646,463              |
| Net Pension Liability   | 809,128                 | 809,128                 |
| Accrued Interest Payable, Net of Current Portion                            | 566,756,549             | 636,833,348             |
| Revenue Bonds Payable, Net of Current Portion & Unamortized Discount        | 1,639,894,839           | 1,473,164,082           |
| <b>Total Noncurrent Liabilities</b>   | <b>2,220,120,263</b>    | <b>2,123,453,021</b>    |
| <b>Total Liabilities</b>  | <b>\$ 2,264,695,558</b> | <b>\$ 2,212,810,021</b> |
| <b>Deferred Inflows of Resources</b>  | <b>1,193,401</b>        | <b>1,193,401</b>        |
| <b>Net Position</b>   |                         |                         |
| Net Investment in Capital Assets  | (90,994,477)            | 65,177,915              |
| Restricted for Debt Service   | 98,650,383              | 110,068,346             |
| Restricted for Capital Projects   | -                       | -                       |
| Restricted by Master Trust Agreement  | 58,508,218              | 41,508,731              |
| Unrestricted  | (623,734,248)           | (740,773,282)           |
| <b>Total Net Position</b>   | <b>(557,570,125)</b>    | <b>(524,018,290)</b>    |
| <b>Total Liabilities, Deferred Inflows of Resources, &amp; Net Position</b> | <b>\$ 1,708,318,834</b> | <b>\$ 1,689,985,132</b> |

|            |                      |                  |                        |
|------------|----------------------|------------------|------------------------|
|            | <b>November 2022</b> | <b>June 2022</b> | <b>FY2023 Decrease</b> |
| Current    | \$ 59,477,313        | \$ 112,642,434   |                        |
| Noncurrent | 99,225,735           | 51,156,921       |                        |
|            | \$ 158,703,048       | \$ 163,799,355   | \$ (5,096,307)         |

\* All investments with a maturity within three months are considered cash for the year-end financial statements. Monthly, unaudited financial statements, carry all investments, regardless of maturity date(s), as Restricted Investments. Fully detailed classifications are only done at year-end in accordance with GASB 41, therefore classification differences exist.



# Statement of Revenues, Expenses, & Changes in Net Position

For five months ended November 30, 2022 & November 30, 2021

|  | <u>November 2022</u>    | <u>November 2021</u>    |
|--|-------------------------|-------------------------|
| <b>Operating Revenues:</b>                       |                         |                         |
| Use Fees & Container Charges                     | \$ 44,578,270           | \$ 40,438,518           |
| Maintenance-of-Way Charges                       | 676,758                 | 699,489                 |
| <b>Total Operating Revenues</b>                  | <u>45,255,028</u>       | <u>41,138,007</u>       |
| <b>Operating Expenses:</b>                       |                         |                         |
| Salaries & Benefits                              | 940,776                 | 808,913                 |
| Administrative Expenses                          | 473,920                 | 389,968                 |
| Professional Services                            | 350,485                 | 308,457                 |
| Maintenance-of-Way                               | 2,353,230               | 714,068                 |
| Depreciation                                     | 8,796,473               | 8,760,334               |
| <b>Total Operating Expenses</b>                  | <u>12,914,884</u>       | <u>10,981,740</u>       |
| <b>Operating Income (Loss)</b>                   | 32,340,144              | 30,156,267              |
| <b>Nonoperating Revenues:</b>                    |                         |                         |
| Interest & Investment Revenue, Net               | 329,343                 | (448,071)               |
| Public Benefit Income                            | -                       | 20,075                  |
| Miscellaneous Revenue                            | 241,676                 | (38,070)                |
| <b>Total Nonoperating Revenues</b>               | <u>571,019</u>          | <u>(466,066)</u>        |
| <b>Nonoperating Expenses:</b>                    |                         |                         |
| Interest Expense                                 | 36,708,566              | 45,166,093              |
| Expenses for Public Benefit & Pass Thru Expenses | 155,956                 | 109,136                 |
| Costs of Issuance                                | 29,598,476              | -                       |
| Gain/Loss Sale or Transfer of Capital Assets     | -                       | -                       |
| <b>Total Nonoperating Expenses, Net</b>          | <u>66,462,998</u>       | <u>45,275,229</u>       |
| <b>Changes in Net Position</b>                   | (33,551,835)            | (15,585,028)            |
| <b>Net Position:</b>                             |                         |                         |
| Net Position, Beginning of Year                  | (524,018,290)           | (471,751,858)           |
| <b>Net Position - End of Year</b>                | <u>\$ (557,570,125)</u> | <u>\$ (487,336,886)</u> |



# Comparison of Budget By Expense Type as of November 30, 2022

| (\$ in thousands)  | Fiscal Year-to-Date    |                        |                       |
|--|------------------------|------------------------|-----------------------|
|  | Budget*                | Actuals                | Variance              |
| <b>Revenues</b>  |                        |                        |                       |
| <b>Operating Revenues</b>                                |                        |                        |                       |
| Use Fees & Container Charges                             | \$ 35,025,047          | \$ 44,578,270          | \$ 9,553,223          |
| Maintenance-of-Way Charges                               | 4,427,776              | 676,758                | (3,751,018)           |
| <b>Total Operating Revenues</b>                          | <b>39,452,823</b>      | <b>45,255,028</b>      | <b>5,802,205</b>      |
| <b>Other Revenues</b>                                    |                        |                        |                       |
| <b>Projects</b>  |                        |                        |                       |
| Pier Pass  | 25,000                 | 25,000                 | -                     |
| EPA Order & Pass Thru Income                             | 70,922                 | -                      | (70,922)              |
| <b>Subtotal Projects</b>                                 | <b>95,922</b>          | <b>25,000</b>          | <b>(70,922)</b>       |
| <b>Miscellaneous</b>                                     |                        |                        |                       |
| Public Benefit Income                                    | 1,848,750              | -                      | (1,848,750)           |
| Gain/Loss from Sale of Fixed Assets                      | -                      | -                      | -                     |
| Ports-Shortfall Advances                                 | -                      | -                      | -                     |
| Office Rental & Other Income                             | 54,007                 | 216,676                | 162,669               |
| Investment Income  | 186,178                | 329,343                | 143,165               |
| <b>Subtotal Miscellaneous</b>                            | <b>2,088,935</b>       | <b>546,019</b>         | <b>(1,542,916)</b>    |
| <b>Subtotal Other Revenues</b>                           | <b>2,184,857</b>       | <b>571,019</b>         | <b>(1,613,838)</b>    |
| <b>Total Sources of Funds</b>                            | <b>41,637,680</b>      | <b>45,826,047</b>      | <b>4,188,367</b>      |
| <b>Expenses</b>  |                        |                        |                       |
| Salaries   | 755,095                | 673,530                | (81,565)              |
| Benefits   | 407,770                | 267,246                | (140,524)             |
| Office Expenses  | 202,598                | 211,504                | 8,906                 |
| Other Management Expenses                                | 39,813                 | 15,189                 | (24,624)              |
| Information Technologies                                 | 92,458                 | 27,901                 | (64,557)              |
| Bank & Investment  | 72,917                 | 48,006                 | (24,911)              |
| ACET Administrative & Capital Support                    | 694,868                | 171,320                | (523,548)             |
| Audit  | 81,863                 | 92,988                 | 11,125                |
| Legal  | 345,833                | 158,539                | (187,294)             |
| Governmental Affairs                                     | 34,749                 | 27,823                 | (6,926)               |
| Other Professional Services                              | 186,315                | 71,135                 | (115,180)             |
| Pass Thru Expenses & EPA Order                           | 70,922                 | 122,204                | 51,282                |
| Expenses for Public Benefit                              | 1,848,750              | 33,752                 | (1,814,998)           |
| <b>Total Administrative Expenses</b>                     | <b>4,833,951</b>       | <b>1,921,137</b>       | <b>(2,912,814)</b>    |
| Maintenance-of-Way Expenses-Rail - Contractors           | 3,359,395              | 554,248                | (2,805,147)           |
| Maintenance-of-Way Expenses-Rail - Capital               | -                      | -                      | -                     |
| Maintenance-of-Way Expenses-Rail - Other                 | 1,068,381              | 930,102                | (138,279)             |
| Maintenance-of-Way Expenses-Nonrail - Contractors        | 550,089                | 77,853                 | (472,236)             |
| Maintenance-of-Way Expenses-Nonrail - Capital            | 2,370,553              | 729,518                | (1,641,035)           |
| Maintenance-of-Way Expenses-Nonrail - Other              | 59,172                 | 47,734                 | (11,438)              |
| Maintenance-of-Way Expenses - ACTA                       | 69,505                 | 13,774                 | (55,731)              |
| <b>Total Maintenance-of-Way Expenses</b>                 | <b>7,477,095</b>       | <b>2,353,229</b>       | <b>(5,123,866)</b>    |
| <b>Subtotal Administrative and M&amp;O Expenses</b>      | <b>12,311,046</b>      | <b>4,274,367</b>       | <b>(8,036,680)</b>    |
| <b>Financing Expenses</b>                                |                        |                        |                       |
| Debt Service - Interest                                  | 24,324,001             | (2,309,982)            | (26,633,983)          |
| Debt Service - Accrued CAB Interest                      | 27,437,463             | 39,018,548             | 11,581,085            |
| <b>Subtotal Financing Expenses</b>                       | <b>51,761,464</b>      | <b>36,708,566</b>      | <b>(15,052,898)</b>   |
| <b>Depreciation &amp; Amortization Expenses</b>          |                        |                        |                       |
| Depreciation   | 8,743,818              | 8,796,473              | 52,655                |
| Cost of Issuance   | -                      | 29,598,476             | 29,598,476            |
| <b>Subtotal Depreciation &amp; Amortization Expenses</b> | <b>8,743,818</b>       | <b>38,394,949</b>      | <b>29,651,131</b>     |
| <b>Total Operating Expenses</b>                          | <b>72,816,328</b>      | <b>79,377,881</b>      | <b>6,561,553</b>      |
| <b>Income (Loss)</b>                                     | <b>\$ (31,178,648)</b> | <b>\$ (33,551,835)</b> | <b>\$ (2,373,187)</b> |

\* Y-T-D Budget calculated on a straight line basis.



# Comparison of Budget By Funds as of November 30, 2022

| (\$ in thousands)   | Fiscal Year-to-Date    |                        |                       |
|---|------------------------|------------------------|-----------------------|
|   | Budget*                | Actuals                | Variance              |
| <b>Revenues</b>   |                        |                        |                       |
| <b>Operating Revenues</b>   |                        |                        |                       |
| Use Fees & Container Charges  | \$ 35,025,047          | \$ 44,578,270          | \$ 9,553,223          |
| Maintenance-of-Way Charges  | 4,427,776              | 676,758                | (3,751,018)           |
| <b>Total Operating Revenues</b>                                     | <u>39,452,823</u>      | <u>45,255,028</u>      | <u>5,802,205</u>      |
| <b>Other Revenues</b>   |                        |                        |                       |
| <b>Projects</b>   |                        |                        |                       |
| Pier Pass   | 25,000                 | 25,000                 | -                     |
| EPA Order & Pass Thru Income  | 70,922                 | -                      | (70,922)              |
| <b>Subtotal Projects</b>  | <u>95,922</u>          | <u>25,000</u>          | <u>(70,922)</u>       |
| <b>Miscellaneous</b>  |                        |                        |                       |
| Public Benefit Income   | 1,848,750              | -                      | (1,848,750)           |
| Gain/Loss from Sale of Fixed Assets                                 | -                      | -                      | -                     |
| Ports-Shortfall Advances  | -                      | -                      | -                     |
| Office Rental & Other Income  | 54,007                 | 216,676                | 162,669               |
| Investment Income   | 186,178                | 329,343                | 143,165               |
| <b>Subtotal Miscellaneous</b>                                       | <u>2,088,935</u>       | <u>546,019</u>         | <u>(1,542,916)</u>    |
| <b>Subtotal Other Revenues</b>                                      | <u>2,184,857</u>       | <u>571,019</u>         | <u>(1,613,838)</u>    |
| <b>Total Sources of Funds</b>                                       | <u>41,637,680</u>      | <u>45,826,047</u>      | <u>4,188,367</u>      |
| <b>Expenses</b>   |                        |                        |                       |
| Administrative Costs  | 2,914,279              | 1,765,181              | (1,149,098)           |
| Railroads-M&O   | 4,427,776              | 1,484,350              | (2,943,426)           |
| Reserve-M&O   | 2,979,814              | 855,105                | (2,124,709)           |
| Financing Fees-M&O  | 69,505                 | 13,774                 | (55,731)              |
| Revenue Fund-Interest & COI   | 24,324,001             | (2,309,982)            | (26,633,983)          |
| Expenses for Public Benefit   | 1,848,750              | 33,752                 | (1,814,998)           |
| LAIF General Fund-Pass Thru & EPA                                   | 70,922                 | 122,204                | 51,282                |
| <b>Total Expenses</b>   | <u>36,635,047</u>      | <u>1,964,384</u>       | <u>(34,670,663)</u>   |
| <b>Non Cash Expenses</b>  |                        |                        |                       |
| Accrued CAB Debt Service Interest                                   | 27,437,463             | 39,018,548             | 11,581,085            |
| Depreciation  | 8,743,818              | 8,796,473              | 52,655                |
| Cost of Issuance  | -                      | 29,598,476             | 29,598,476            |
| <b>Subtotal Interest, Depreciation, &amp; Amortization Expenses</b> | <u>36,181,281</u>      | <u>77,413,497</u>      | <u>41,232,216</u>     |
| <b>Total Operating Expenses</b>                                     | <u>72,816,328</u>      | <u>79,377,881</u>      | <u>6,561,553</u>      |
| <b>Income (Loss)</b>  | <u>\$ (31,178,648)</u> | <u>\$ (33,551,835)</u> | <u>\$ (2,373,187)</u> |

\* Y-T-D Budget calculated on a straight line basis.





# Cash & Investment Summary as of November 30, 2022

| <u>Cash and Investment Balances (\$ in thousands)</u>   |                             |                                 |   |                       |                         |
|---|-----------------------------|---------------------------------|---|-----------------------|-------------------------|
| <u>Institution</u>                                      | <u>Bank<br/>Reference #</u> | <u>Chandler<br/>Reference #</u> | <u>Account Description</u>                                      | <u>Book<br/>Value</u> | <u>Market<br/>Value</u> |
| <b>Bank of America</b>                                  |                             |                                 |   |                       |                         |
|   | 0457 & 0796                 | -                               | Concentration & Disbursement                                    | 614                   | 614                     |
| <b>Pre 1999 Bond Sale Accounts-Union Bank</b>           |                             |                                 |   |                       |                         |
|   | 5080                        | 512                             | SR-47   | 4,287                 | 4,267                   |
| Grant Reimbursement Received this Month \$-0.00-        |                             |                                 |   |                       |                         |
| Grant Reimbursement Received FY to Date \$193,557       |                             |                                 |   |                       |                         |
| <b>Local Agency Investment Fund (LAIF)</b>              |                             |                                 |   |                       |                         |
|   | 40-19-006                   | 570                             | General Fund  | 9,641                 | 9,641                   |
| <b>1999, 2004 and 2016 Bond Funds - US Bank-Trustee</b> |                             |                                 |   |                       |                         |
| <b>Revenue Funds</b>                                    |                             |                                 |   |                       |                         |
|   | 1170                        | 507                             | Revenue Fund  | 18,226                | 18,249                  |
|   | 1171                        | 508                             | M & O Fund  | 3,968                 | 3,970                   |
|   | 1172                        | 509                             | Reserve Account   | 15,383                | 15,114                  |
|   | 1189                        | 518                             | Administrative Costs  | 9,946                 | 9,950                   |
|   |                             |                                 | <b>Subtotal Revenue Funds</b>                                   | <b>47,523</b>         | <b>47,283</b>           |
| <b>Debt Service Funds</b>                               |                             |                                 |   |                       |                         |
|   | 61200                       | -                               | 99C Interest Account  | 2,102                 | 2,125                   |
|   | 61201                       | -                               | 99C Principal Account   | 22,570                | 22,570                  |
|   | 38003                       | -                               | 04B Debt Service Reserve  | 24,792                | 23,389                  |
|   | 39004                       | -                               | 04A Debt Service Reserve  | 33,889                | 31,781                  |
|   | 38000                       | 516                             | 04B Debt Service  | -                     | -                       |
|   | 39006                       | -                               | 04A Financing fee   | 1,425                 | 1,425                   |
|   | 39002                       | 515                             | 04A Debt Service Principal Account                              | -                     | -                       |
|   | 59001                       | -                               | 12 Debt Service Interest Account                                | 344                   | 344                     |
|   | 59002                       | -                               | 12 Debt Service Principal Account                               | 1,759                 | 1,759                   |
|   | 59004                       | 516                             | 12 Debt Service Reserve Account                                 | 7,663                 | 7,161                   |
|   | 67001                       | -                               | 13A Debt Service Interest Account                               | 1                     | 1                       |
|   | 67002                       | -                               | 13A Debt Service Principal Account                              | 6                     | 6                       |
|   | 27000                       | -                               | 16A Debt Service  | 8                     | 8                       |
|   | 27004                       | -                               | 16A Debt Service Reserve  | 3,623                 | 3,407                   |
|   | 108006                      | -                               | 16B- Financing fee  | 661                   | 661                     |
|   | 108000                      | -                               | 16B- Financing fee  | 6                     | 6                       |
|   | 98000                       | -                               | 2022 A - DS Fund  | -                     | -                       |
|   | 98001                       | -                               | 2022 A - DS Reserve Fund  | -                     | -                       |
|   | 98002                       | -                               | 2022 A - Interest Account                                       | -                     | -                       |
|   | 98003                       | -                               | 2022 A - Principal Account                                      | -                     | -                       |
|   | 98004                       | -                               | 2022 A - Redemption Account                                     | -                     | -                       |
|   | 98005                       | -                               | 2022 A - Cost of Issuance Fund                                  | 31                    | 31                      |
|   | 98006                       | -                               | 2022 A - Bond Proceeds Account                                  | -                     | -                       |
|   | 53000                       | -                               | 2022 B - DS Fund  | -                     | -                       |
|   | 53001                       | -                               | 2022 B - DS Reserve Fund  | -                     | -                       |
|   | 53002                       | -                               | 2022 B - Interest Account                                       | 2,108                 | 2,131                   |
|   | 53003                       | -                               | 2022 B - Principal Account                                      | -                     | -                       |
|   | 53004                       | -                               | 2022 B - Redemption Account                                     | -                     | -                       |
|   | 53005                       | -                               | 2022 B - Cost of Issuance Fund                                  | 61                    | 61                      |
|   | 53006                       | -                               | 2022 B - Bond Proceeds Account                                  | -                     | -                       |
|   | 86000                       | -                               | 2022 C - DS Fund  | 1                     | 1                       |
|   | 86001                       | -                               | 2022 C - DS Reserve Fund  | -                     | -                       |
|   | 86002                       | -                               | 2022 C - Interest Account                                       | -                     | -                       |
|   | 86003                       | -                               | 2022 C - Principal Account                                      | -                     | -                       |
|   | 86004                       | -                               | 2022 C - Redemption Account                                     | -                     | -                       |
|   | 86005                       | -                               | 2022 C - Cost of Issuance Fund                                  | 31                    | 31                      |
|   |                             |                                 | <b>Subtotal Debt Service Funds</b>                              | <b>101,081</b>        | <b>96,898</b>           |
|   |                             |                                 | <b>Total 1999, 2004, 2012, 2016, 2022 Bond Funds- U.S. Bank</b> | <b>148,604</b>        | <b>144,181</b>          |
| <b>Total Cash &amp; Investment Balances</b>             |                             |                                 |   | <b>\$ 163,146</b>     | <b>158,703</b>          |



# Cash & Investment Summary (cont'd)

## as of November 30, 2022

### Investment Schedule (\$ in thousands)

| <u>Type of Investment</u>            | <u>Book Value</u> | <u>Market Value</u> | <u>Percentage of Total</u> | <u>Investment Policy Limit</u> |
|--------------------------------------|-------------------|---------------------|----------------------------|--------------------------------|
| Money Market Funds                   | \$ 49,200         | \$ 49,223           | 31.02%                     | 20.00%                         |
| U.S. Government & Agency Obligations | 39,539            | 37,904              | 23.88%                     | 100.00%                        |
| Commercial Paper                     | -                 | -                   | 0.00%                      | 15.00%                         |
| U.S. Treasury Note                   | 52,689            | 50,260              | 31.67%                     | 100.00%                        |
| Corporate Bonds                      | 11,463            | 11,061              | 6.97%                      | 30.00%                         |
| Bank of America                      | 614               | 614                 | 0.39%                      | 20.00%                         |
| Local Agency Investment Fund         | 9,641             | 9,641               | 6.07%                      | \$40 Million                   |
| <b>Total</b>                         | <b>\$ 163,146</b> | <b>\$ 158,703</b>   | <b>100.00%</b>             |                                |

### Monthly Cash Flow

**November 2022**

**Total Beginning Cash** \$ 41,617,471

#### **Receipts**

|   |                  |
|---|------------------|
| Use Fees & Container Charges            | \$ 8,440,039     |
| M&O & Misc. Revenues, & Funds Transfers | 779,966          |
| <b>Total Receipts</b>                   | <b>9,220,005</b> |

#### **Disbursements**

|   |                  |
|---|------------------|
| Debt Service - Transfer to Accounts       | 2,094,653        |
| M&O, Administrative, & Financing Expenses | 1,219,113        |
| <b>Total Disbursements</b>                | <b>3,313,766</b> |

**Cash Flow for Month** \$ 5,906,239

**Total Ending Cash** \$ 47,523,710



# Cash Flow as of November 30, 2022

| <u>November 2022</u>                              |                             |
|---|-----------------------------|
| <b>Beginning Cash</b>                             |                             |
| Master Indenture Revenue Fund 1170                | 11,858,566                  |
| Master Indenture M&O Fund 1171                    | 3,857,377                   |
| Master Indenture Reserve Fund 1172                | 15,522,902                  |
| 1999A Admin Fund 1189                             | 10,378,626                  |
| 2004A Financing Fund 39006                        | -                           |
| 1999C Construction Fund 1206                      | -                           |
| <b>Total Beginning Cash</b>                       | <u>41,617,471</u>           |
| <b>Receipts</b>                                   |                             |
| Use Fee & Container Charges                       | 8,440,039                   |
| M&O   | 752,222                     |
| Funds Transferred from BOA to Admin Fund          | -                           |
| Funds Transferred from BOA to Reserve Fund        | -                           |
| Annual Accounting- transfer from 1999C Interest   | -                           |
| Annual Accounting - Transfer from Revenue Fund    | -                           |
| Interest Income / Loss                            | 27,744                      |
| <b>Total Receipts</b>                             | <u>9,220,005</u>            |
| <b>Total Cash</b>                                 | <u><u>\$ 50,837,476</u></u> |
| <b>Disbursements</b>                              |                             |
| Debt Service - transfer to 1999C Principal        | -                           |
| Debt Service - transfer to 1999C Interest         | -                           |
| Debt Service - transfer to 2012 Interest          | 171,135                     |
| Debt Service- transfer to 2012 Principal          | 879,167                     |
| Debt Service- transfer to 2022B Interest          | 1,044,351                   |
| Debt Service - transfer to 2013A Principal        | -                           |
| Semi-Annual Accounting - Transfers & Debt Service | -                           |
| Transfer to 2012 Reserve                          | -                           |
| Transfer to 2004A Financing Fee                   | -                           |
| Transfer to Admin Fund                            | -                           |
| Transfer to Master Reserve                        | -                           |
| Transfer to 2016A Reserve                         | -                           |
| Transfer to 2016B Financing Fee                   | -                           |
| Annual Accounting- transfer to 2022C Reserve Fund | -                           |
| Debt service payment - 2016A Interest             | -                           |
| Debt service payment - 2016B Interest             | -                           |
| Debt service payment - 2004                       | -                           |
| M&O - Railroads expense payments                  | 643,254                     |
| M&O - Reserve expense payments                    | 143,545                     |
| Administrative expense payments                   | 432,314                     |
| Financing expense payments                        | -                           |
| <b>Total Disbursements</b>                        | <u>3,313,766</u>            |
| <b>Net Ending Cash</b>                            | <u><u>\$ 47,523,710</u></u> |
| <b>Ending Cash</b>                                |                             |
| Master Indenture Revenue Fund 1170                | 18,225,925                  |
| Master Indenture M&O Fund 1171                    | 3,968,412                   |
| Master Indenture Reserve Fund 1172                | 15,382,971                  |
| 1999A Admin Fund 1189                             | 9,946,402                   |
| 2004A Financing Fund 39006                        | -                           |
| <b>Total Ending Cash</b>                          | <u><u>\$ 47,523,710</u></u> |



# Cash Flow – YTD as of November 30, 2022

| <b><u>Cash Flow - Fiscal Year-to-Date</u></b> |                   |                             |
|---|-------------------|-----------------------------|
|   |                   | <b><u>November 2022</u></b> |
| <b>Total Beginning Cash as of 7/1/22</b>      |                   | \$ 33,735,654               |
| <b>Receipts</b>                               |                   |                             |
| Use Fees & Container Charges                  | \$ 46,574,175     |                             |
| M&O & Misc. Revenues, & Funds Transfers       | 21,653,329        |                             |
| <b>Total Receipts</b>                         | <u>68,227,504</u> |                             |
| <b>Disbursements</b>                          |                   |                             |
| Debt Service - Transfer to Accounts           | 46,374,609        |                             |
| M&O, Administrative, & Financing Expenses     | 8,064,839         |                             |
| <b>Total Disbursements</b>                    | <u>54,439,448</u> |                             |
| <b>Cash Flow for Fiscal Year</b>              |                   | <u>\$ 13,788,056</u>        |
| <b>Total Ending Cash</b>                      |                   | <u><u>\$ 47,523,710</u></u> |



# Cash Flow – YTD as of November 30, 2022

| November 2022                                     |                       |
|---|-----------------------|
| <b>Beginning Cash as of 7/1/22</b>                |                       |
| Master Indenture Revenue Fund 1170                | 14,872,364            |
| Master Indenture M&O Fund 1171                    | 4,269,281             |
| Master Indenture Reserve Fund 1172                | 11,638,283            |
| 1999A Admin Fund 1189                             | 2,955,726             |
| 2004A Financing Fund 39006                        | -                     |
| <b>Total Beginning Cash</b>                       | <b>33,735,654</b>     |
| <b>Receipts</b>                                   |                       |
| Use Fee & Container Charges                       | 46,574,175            |
| M&O   | 3,876,369             |
| Funds Transferred from BOA to Admin Fund          | -                     |
| Funds Transferred from BOA to Reserve Fund        | 5,500,000             |
| Annual Accounting - Transfer from Revenue Fund    | 11,216,600            |
| Interest Income / Loss                            | 1,060,360             |
| <b>Total Receipts</b>                             | <b>68,227,504</b>     |
| <b>Total Cash</b>                                 | <b>\$ 101,963,158</b> |
| <b>Disbursements</b>                              |                       |
| Debt Service - transfer to 1999C Principal        | -                     |
| Debt Service - transfer to 1999C Interest         | 2,101,660             |
| Debt Service - transfer to 2012 Interest          | 856,583               |
| Debt Service- transfer to 2012 Principal          | 1,758,333             |
| Debt Service - transfer to 2022A Interest         | 4,767,772             |
| Debt Service- transfer to 2013A Principal         | -                     |
| Semi-Annual Accounting - Transfers & Debt Service | -                     |
| Transfer to 2012 Reserve                          | 96,000                |
| Transfer to 2004A Financing Fee                   | 837,318               |
| Transfer to Admin Fund                            | 9,000,244             |
| Transfer to Master Reserve                        | 5,500,000             |
| Transfer to 2016A Reserve                         | 45,000                |
| Transfer to 2016B Financing Fee                   | 332,112               |
| Annual Accounting- transfer to 2022C Reserv Fee   | 1,134,734             |
| Debt service payment - 2016A Interest             | 11,520,150            |
| Debt service payment - 2016B Interest             | 8,424,703             |
| Debt service payment - 2004                       | -                     |
| M&O - Railroads expense payments                  | 4,193,046             |
| M&O - Reserve expense payments                    | 1,747,071             |
| Administrative expense payments                   | 2,124,722             |
| Financing expense payments                        | -                     |
| <b>Total Disbursements</b>                        | <b>54,439,448</b>     |
| <b>Net Ending Cash</b>                            | <b>\$ 47,523,710</b>  |
| <b>Ending Cash</b>                                |                       |
| Master Indenture Revenue Fund 1170                | 18,225,925            |
| Master Indenture M&O Fund 1171                    | 3,968,412             |
| Master Indenture Reserve Fund 1172                | 15,382,971            |
| 1999A Admin Fund 1189                             | 9,946,402             |
| 2004A Financing Fund 39006                        | -                     |
| <b>Total Ending Cash</b>                          | <b>\$ 47,523,710</b>  |


# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: February 2, 2023

From: Michael C. Leue, Chief Executive Officer 

Subject: APPROVE Resolution No. JPA 23-3 authorizing teleconference meetings and in-person and/or hybrid meetings for the ACTA Governing Board and its Audit Committee pursuant to AB 361

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### **Recommendation:**

Approve the proposed Resolution to authorize the ACTA Governing Board and its Audit Committee to continue holding teleconference meetings or to hold in-person and/or hybrid meetings due to the COVID-19 pandemic.

### **Discussion:**

Due to the COVID-19 pandemic, from April 2020 onward the ACTA Governing Board and its Audit Committee have conducted public meetings via telephonic conference calls, while such remote meetings were authorized through various Executive Orders issued by the Governor of California. These Executive Orders expired on September 30, 2021.

On September 16, 2021, the Governor signed into law Assembly Bill 361 (AB 361), which amended certain requirements of the Ralph M. Brown Act ("Brown Act") by allowing a continuation of similar remote meeting practices during declared states of emergency where certain requirements are met. Pursuant to the Governor's Executive Order N-15-21, AB 361 went into effect on October 1, 2021.

To utilize the Brown Act remote meeting provisions set forth in AB 361, legislative bodies must make certain findings regarding the COVID-19 state of emergency and the need for remote meetings, and so long as the need for remote meetings continues, make those findings by a majority vote every 30 days. The attached Resolution (Transmittal 1) makes the necessary findings pursuant to the Brown Act to authorize the Governing Board and its Audit Committee to follow the teleconference meeting provisions of Government Code Section 54953(e)(2) and opt for in-person and/or hybrid (a combination of virtual and in-person) meetings.

On September 30, 2021, the City of Long Beach Health Officer recommended that physical distancing measures continue to be practiced throughout Long Beach communities and that they be continued by the City's legislative bodies to minimize the spread of COVID-19 for the protection of the community, staff, presenters, and legislative body members. On November 9, 2022, the City of Long Beach Health Officer recommended the continuation of virtual public meetings, to the extent possible, to promote social distancing measures due to the COVID-19 pandemic, and such recommendation currently remains in place.

The Long Beach Board of Harbor Commissioners began to conduct hybrid meetings on October 24, 2022, allowing both the commissioners and the public to attend in person or remotely. The Los Angeles Board of Harbor Commissioners returned to in-person meetings on November 3, 2022.

**Budget Impact:**

There will be no budget impact from the proposed action.

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed and approved the proposed Resolution as to form.

**Transmittals:**

Transmittal 1 – Resolution No. JPA 23-3

### **Resolution No. JPA 23-3**

## **RESOLUTION TO CONTINUE TELECONFERENCE MEETINGS OR OPT FOR IN-PERSON AND/OR HYBRID MEETINGS PURSUANT TO AB 361**

WHEREAS, on March 12, 2020, the Governor of California issued Executive Order N-25-20 which temporarily suspended certain requirements of the Ralph M. Brown Act ("Brown Act") in light of the COVID-19 pandemic, an ongoing public health state of emergency; and

WHEREAS, the Governor issued additional Executive Orders in 2020 and 2021 further suspending various requirements of the Brown Act for public meetings; and

WHEREAS, following expiration of the Executive Orders, on September 16, 2021, the Governor signed into law Assembly Bill 361 ("AB 361"), allowing for teleconference meetings under the Brown Act during declared states of emergency; and

WHEREAS, there is a continuing state of emergency concerning the COVID-19 pandemic at both the State and City of Long Beach levels, and, on November 9, 2022, the City of Long Beach Health Officer issued recommendations for the continuation of virtual public meetings, to the extent possible, to promote social distancing measures due to the COVID-19 pandemic, and such recommendation currently remains in place; and

NOW THEREFORE BE IT RESOLVED as follows:

Section 1. The ACTA Governing Board finds that the COVID-19 pandemic state of emergency continues to directly impact the ability of legislative bodies to meet safely in person and that the City of Long Beach Health Officer's recommendation to practice physical distancing measures remains in effect.

Section 2. The ACTA Governing Board hereby authorizes the ACTA Governing Board and its Audit Committee to hold teleconference meetings in accordance with Government Code Section 54953(e)(1)-(2) and to opt for in-person and/or hybrid (a combination of virtual and in-person) meetings to the extent possible. Such meetings must comply (wherever feasible) with the City of Long Beach Health Officer's recommendation with respect to any protocols for in-person meetings.

Section 3. This resolution shall take effect immediately upon its adoption by the ACTA Governing Board, and the Board Secretary shall certify the vote adopting this resolution.

AYES:

NOES:

ABSENT:

I HEREBY CERTIFY THAT the foregoing resolution was adopted by the ACTA Governing Board at its meeting held on February 2, 2023.

\_\_\_\_\_  
Maria M. Melendres  
Board Secretary

APPROVED AS TO FORM

\_\_\_\_\_, 2023  
HYDEE FELDSTEIN SOTO, City Attorney


By \_\_\_\_\_  
Heather M. McCloskey, Deputy City Attorney  
ACTA Co-General Counsel



# M E M O

## *Alameda Corridor Transportation Authority*

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|               |   |
|---------------|---|
| To:           | Governing Board   |
| Meeting Date: | February 2, 2023  |
| From:         | Michael C. Leue, Chief Executive Officer    |
| Subject:      | APPROVE Agreements for On-Call Trash Removal Services with NRC Environmental Services, Inc.; Ocean Blue Environmental Services, Inc.; Screamin Eagle Services, Inc. |

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**Recommendation:**

Authorize the Chief Executive Officer or Chief Financial Officer to execute agreements for On-Call Trash Removal Services in an amount of \$50,00 per year and not to exceed \$150,000 for a three-year term with these three service providers:

1. NRC Environmental Services, Inc. - Agreement No. 901 for \$50,000
2. Ocean Blue Environmental Services, Inc. - Agreement No. 902 for \$50,000
3. Screamin Eagle Services, Inc. for \$50,000 - Agreement No. 903 for \$50,000

**Discussion:**


ACTA is experiencing increased requirements for trash clean-up due to the increase of Persons Experiencing Homelessness (PEH) during the Pandemic. These PEH utilize ACTA's infrastructure or adjacent properties which provides them with unobtrusive locations to set up shelters or inhabit under and inside bridges. This situation results in an enormous amount of trash being disposed along the right-of-way and next to ACTA's facilities. The typical trash is a combination of wood, paper, furniture, clothing, flammable material and hazardous waste. This trash is a nuisance, an eyesore to local Cities, a public health issue and has caused fires and damage to ACTA's facilities.

ACTA published a Request for Proposals in September 2022 for Trash Removal services and received bids from local and minority firms. Three firms were selected to be available in an on-call pool for bidding or assignment on particular tasks. All three of the recommended firms have worked with ACTA before and one is a local small minority business.

The On-call Trash Removal firms will be available to respond to requests from ACTA to immediately remove trash and other unsightly debris from the Corridor right-of-way in a cost-effective manner. By having three on-call firms, ACTA can request bids to competitively price and identify the best capabilities for each trash removal task.

**Budget Impact:**

Funds for the Trash Removal services are included in the FY23 Program and Operating Budget. Funds for future fiscal years will be brought to the Governing Board for approval.



**Co-General Counsel Review:**

ACTA's Co-General Counsel have reviewed and approved the proposed agreements as to form.

**Transmittals:**

Transmittal 1 – Agreement No. 901 with NRC Environmental Services, Inc.

Transmittal 2 – Agreement No. 902 with Ocean Blue Environmental Services, Inc.

Transmittal 3 – Agreement No. 903 with Screamin Eagle Services Inc.

AGREEMENT NO. C0901

BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND  
NRC ENVIRONMENTAL SERVICES, INC.

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 NRC ENVIRONMENTAL SERVICES, INC., a Washington corporation, whose address is 3777 Long Beach Blvd., Suite 100, Long Beach, California 90807 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist ACTA in removing trash and debris that accumulates along the Alameda Corridor ("Project"); and

WHEREAS, Consultant is an organization that provides these services, including, but not limited to those services required by ACTA and, by virtue of training and experience, is well-qualified to provide such services to ACTA; and

WHEREAS, ACTA does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Incorporation of Recitals

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant

2.1 All of the potential services Consultant shall perform for ACTA are set forth in Exhibit A attached hereto and hereinafter shall be referred to as "Scope of Work."

2.2 Consultant's performance of tasks shall occur as follows:

a. ACTA's Chief Executive Officer ("CEO") shall issue a written Contract Task Order ("CTO") in the form attached hereto as Exhibit B that specifies, without limitation ("Directive"): the task or subtask to be performed; the specific services required in connection with such task or subtask; the deliverables required in the performance of such task or subtask; the schedule for the performance of such task or subtask; authorized personnel who may perform the task or subtask; and authorized compensation for such task or subtask.

b. Consultant, to reflect its agreement with all the terms of such Directive, shall sign, date and return such CTO to ACTA.

c. Following ACTA's receipt of the CTO signed by Consultant, ACTA's CEO shall issue a Notice to Proceed in the form attached hereto as Exhibit C that has been signed by him and that authorizes Consultant to commence performance of the services contemplated by such CTO.

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that ACTA's CEO lacks authority to request the performance of any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work or a Directive, or in the absence of both a Directive and a Notice to Proceed, are performed as a volunteer and shall not be compensable under this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's CEO, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted on the effective date of this Agreement, whom ACTA's CEO may subsequently approve in writing ("Subconsultants"), or as listed on Directives. 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 it and its Subconsultants.

2.5 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. ACTA shall pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.6 ACTA's CEO shall resolve in his sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of a Directive, and the amount of compensation due. Upon written notice from ACTA's CEO, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to his reasonable satisfaction and at Consultant's sole cost and expense. Compliance with the requirements of this Section 2.6 is a condition to payment by ACTA of compensation to Consultant pursuant to this Agreement.

2.7 Consultant's representative responsible for administering this Agreement, Richard Iniguez ("Project Manager"), shall not be changed without ACTA's CEO's written approval. ACTA's CEO may, for any reason in his sole reasonable discretion,

require Consultant to substitute a new Project Manager. If ACTA requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

2.8 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.9 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.9 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice ACTA at the lower rate.

2.10 Consultant shall promptly consider and implement, to his reasonable satisfaction, any written comments of ACTA's CEO.

2.11 Consultant shall review information provided by ACTA. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of ACTA's CEO in writing.

2.12 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by ACTA's CEO. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in a Directive shall entitle ACTA to have services completed by others, shall obligate Consultant to pay ACTA ACTA's cost to undertake completion of such services, and shall authorize ACTA to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in a Directive shall result in economic losses to the ACTA, including, but not limited to, the timely bidding and awarding of contracts, completion of the Project in connection with which Consultant's services are rendered and the use of such project by ACTA, the users of the Alameda Corridor and the public.

### 3. Services To Be Performed By ACTA

3.1 ACTA shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by ACTA, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of ACTA's CEO, shall assist in completing the Scope of Work.

3.2 Consultant shall provide ACTA's CEO with reasonable advance written notice if it requires access to any premises under the control of ACTA. Subsequent 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 premises may be occupied or used by railroad companies, tenants or contractors of ACTA and that access rights granted by ACTA to Consultant shall be consistent with any such occupancy or use.

3.3 ACTA shall not be obligated to provide information and/or services except as specified in this Agreement.

#### 4. Effective Date and Term

4.1 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.

4.2 Commencing on the Agreement's effective date, this Agreement shall be in full force and effect until the earlier of the following occurs:

- a. Three (3) years has lapsed from the effective date of this Agreement;  
or
- b. ACTA's Board, in its sole discretion, terminates this Agreement pursuant to Section 6.

#### 5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant and Consultant shall accept a sum not to exceed Fifty Thousand Dollars (\$50,000). The total sum payable under this Agreement shall be determined by Directives, and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.

5.2 Compensation payable under this Agreement for payment for labor, travel, per diem, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses") are listed in Exhibit D. No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit D expressly so allows.

5.3 Compensation payable under this Agreement shall be on a (1) Fixed Fee, (2) Time and Materials, (3) Equal Payment or (4) any combination of the three, as may be more particularly specified in a Directive.

a. Fixed Fee. Lump sum compensation for satisfactory performance as may be specified in a particular Directive.

b. Time and Materials Fee. Consultant shall be paid based on the actual time expended in the performance of tasks using the applicable rates set forth in Exhibit D. Consultant will also be reimbursed for materials and other out-of-pocket expenses at cost. The rates identified in Exhibit D state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged unless authorized in Exhibit D.

c. Equal Payment Fee. Consultant shall be paid equal amounts over time throughout a particular Directive, up to the stated fixed amount.

5.4 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to ACTA for services performed during the prior month, accompanied by such records and receipts as may be required by Section 5.5. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and one (1) copy of each such invoice for payment in the format that contains the information specified in Exhibit E, and that includes 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. \_\_\_\_\_, 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.

\_\_\_\_\_  
(signed)

5.5 Where Consultant employs Subconsultants under this Agreement, Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit F) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

5.6 Consultant shall submit supporting documents with each invoice, which may include, but not be limited to, provider invoices, receipts, payrolls, and time sheets. Consultant is not required to submit support for direct costs items of \$25 or less. All invoices are subject to audit.

5.7 All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of ACTA business, the same may be reviewed and approved.

For payment and processing, all invoices shall be mailed to the following address:

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

5.8 If the term of this Agreement exceeds one (1) year and if the CEO so consents in writing, Consultant may increase the rates set forth in Exhibit D after each

twelve (12) months of service as long as such increases (a) are equal to or lower than the rates Consultant charges to other municipal or governmental entities and (b) represent an increase of no more than four percent (4%) over the rates charged during the prior twelve (12) month period. Such increases in rates, if any, shall not result in increases of the amount of total compensation payable under this Agreement set forth in Section 5.1. In the event of any such rate increase, Exhibit D shall be revised, replaced and renumbered as Exhibit "D-1," Exhibit "D-2," etc., as applicable.

## 6. Termination

6.1 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 ACTA's CEO 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.

6.2 Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. ACTA's CEO, in his sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly.

6.3 If Board so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to ACTA in an organized, usable form with all items properly labeled to the degree of detail specified by ACTA's CEO. No compensation shall be due Consultant until it complies with the requirements of this paragraph.

6.4 Pursuant to Section 5 of ACTA's Amended and Restated Joint Exercise of Powers Agreement, ACTA shall be restricted in its powers in the same manner as the City of Los Angeles is restricted in its exercise of similar powers. Therefore, this Agreement is subject to the provisions of the Los Angeles City Charter Section 320 which precludes ACTA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

ACTA, its board, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the



Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

## 7. Recordkeeping and Audit Rights

7.1 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. Consultant's books and records shall be readily accessible to and open for inspection and copying at the 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.

7.2 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 Section 7.2 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.

## 8. Consultant Is An Independent Contractor

Consultant, in the performance of the Scope of Work, 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.

## 9. Indemnification

9.1 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, arbitration proceedings, administrative proceedings, 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.

9.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including without limitation, Section 2782.8 of the California Civil Code), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said Section 2782.8, Consultant shall indemnify, protect, defend and hold harmless ACTA, its Board and any of its officers, agents, 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 Board, officers, agents, employees, assigns, or successors in interest that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, or the acts or omissions of an officer, employee, agent or Subconsultant, excepting only liability resulting from the negligence or willful misconduct of ACTA.

## 10. Insurance

### 10.1 Insurance procured by Consultant on Behalf of Consultant

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and as a condition precedent to the effectiveness of this Agreement, 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:

#### (a) 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 Five Million Dollars (\$5,000,000) 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 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, a severability of interest clause and have the railroad exclusion deleted. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(b) Automobile Liability Insurance

Automobile liability insurance 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) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage 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.

(c) 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. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. 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.

(d) Pollution Liability Insurance

Consultant shall procure and maintain throughout the term of this Agreement, at its cost, Pollution Liability 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 Rating is not available), with Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or death or property damage arising out of each accident or occurrence covering Consultant's services under this Agreement. 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 judgment, such retention or self-insurance is justified by the net worth of Consultant. Consultant's pollution liability shall include coverage for losses caused by pollution conditions that arise from the operation of Consultant described under the scope of services of this Agreement and include: (a) on-site and off-site coverage for bodily injury, sickness, disease, mental anguish or shock sustained by a person, including death; (b) on-site and off-site property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; (c) on-site and off-site defense including costs, charges and expenses incurred in the investigation adjustment or defense of claims for such compensatory damages.

Non-owned disposal site coverage shall also be provided if Consultant is handling, storing or generating hazardous materials or any material/substance otherwise regulated under governmental laws/regulations.

The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute with it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and severability of interest clause, have no exclusions for Contractual Liability, have no restrictions for Sole Liability of Consultant, and shall not contain any other exclusions contrary to this Agreement.

Each policy shall name ACTA, its Board, officers, agents and employees as Primary and Non-Contributory additional insureds.

#### 10.2 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 Section 9, 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 Section 10. 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 the Alameda Corridor Transportation Authority, 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. C0901, 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 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, 411 West Ocean Boulevard, 9<sup>th</sup> Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

### 10.3 Required Features of Coverages

Insurance procured by Consultant in connection with this Section 10 shall include the following features:

#### (a) 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.

#### (b) 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.

#### (c) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to ACTA as set forth herein.

#### (d) 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.

#### (e) 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 the 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 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.

#### 10.4 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.

#### 11. Personal Services Agreement

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 Section 2.3. 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.

#### 12. Confidentiality

Consultant shall not disclose any proprietary or confidential information of ACTA to any third party or parties during or after the term of this Agreement without the prior written consent of ACTA. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work 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.

#### 13. Affirmative Action

Consultant 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.

14. Small/Very Small Business Enterprise Program

It is the policy of ACTA to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE), 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 this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, 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, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit G.

15. 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.

16. Compliance with Applicable Laws

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, and local laws, ordinances, rules, regulations, and orders.

17. Trademarks, Copyrights and Patents

Consultant shall promptly and fully inform ACTA's CEO in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant 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 Consultant in the performance of this Agreement.

18. Proprietary Information

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 section 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 the 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.

19. Royalty-Free License

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.

20. ACTA's Disclosure Obligations

Consultant acknowledges that ACTA is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

21. 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, registered or certified mail, return receipt requested, and postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective



parties, notice to 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 the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

22. 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.

23. Titles and Captions

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section 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.

24. Modification in Writing

This Agreement shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this Agreement. Any such modifications are subject to all applicable approval processes required by, without limitation, ACTA's Amended and Restated Joint Exercise of Powers Agreement.

25. 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.

26. 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.

27. 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.

28. Integrated Agreement

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.**

29. Exhibits; Sections

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 sections are to sections of this Agreement unless stated otherwise.

30. Counterparts and Electronic Signatures

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 executed this Agreement on the date next to their signatures.

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael C. Leue, P.E.  
Chief Executive Officer

Attest: \_\_\_\_\_  
Secretary

NRC ENVIRONMENTAL SERVICES,  
INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_, 2023  
DAWN MCINTOSH, Long Beach City Attorney

By \_\_\_\_\_  
Thomas Y. Oh, Deputy  
ACTA Co-General Counsel

# EXHIBIT A

## Scope of Work

The Alameda Corridor Transportation Authority (“ACTA”) has occasional need for the removal of trash and debris along the Alameda Corridor twenty-mile right-of-way, including locations where ACTA maintains property adjacent to the tracks or at surface level above the trench (see Attachment 1).

ACTA requires the services of Consultant to collect and remove a variety of trash, debris and large items and legally haul and dispose of these at a qualified waste disposal location, in accordance with all local, state and federal regulations. The types of trash that may require removal include, but are not limited to:

- Household Trash;
- Furniture;
- Appliances;
- Building Materials;
- Automobile Parts

Consultant must be able to respond to ACTA’s request for trash removal within an agreed upon time frame. Trash removal is expected to typically occur on weekdays, but there may be need for weekend work under special circumstances.

### I. General

Consultant shall support and perform all phases of on-site trash removal on or adjacent to railroad tracks and Alameda Corridor Property, on an as needed basis.

#### A. Emergency Response

Emergency Response is the ability to respond to a request to remove trash on an emergency basis at any time, 24 hours per day, 7 days per week (including holidays), and provide containment and cleanup as required by local, state and federal regulatory agencies, and as directed by ACTA. Consultant shall have the ability to arrive on-scene within 30 to 45 minutes of notification.

#### B. Unidentified Waste

Unidentified wastes are unlabeled containers with unknown substances deposited on Alameda Corridor property that require removal.

1. Consultant shall have the ability to identify, package, and

transport the unidentified wastes deposited on Alameda Corridor properties (including on railroad tracks) or right-of-way for recycling, treatment, or disposal.

2. Response to these work requests will usually be required during normal working hours.

### C. Waste Management

Waste Management is the ability to identify, categorize, remove, package and recycle, or dispose of hazardous, non-hazardous, and regulated waste that are generated through the normal work process of maintaining property or equipment operated and maintained by ACTA.

1. Response to these removal requests will usually be required during normal working hours.
2. Consultant shall be required to be on-site at a facility operated and maintained by ACTA at a mutually agreed-upon time with an authorized ACTA representative.
3. Waste management services may include, but are not limited to:
  - a. Collecting and removal of debris;
  - b. Consolidating and packaging of hazardous materials;
  - c. Isolating and packaging unidentified materials;
  - d. Characterizing and profiling of waste prior to disposal; and
  - e. Transporting waste for disposal.
4. Regulated and/or hazardous materials include, but are not limited to:
  - a. Asbestos, crude oil and petroleum products, including fuel oil, mineral oil, gasoline, diesel;
  - b. Corrosive liquids, including acid, and alkaline solutions;
  - c. Polychlorinated Biphenyls (PCBs) and PCB-contaminated materials;
  - d. Mercury, lead, and other metals;
  - e. Waste tires;
  - f. Treated wood;
  - g. Bio-hazard waste;
  - h. Sewage; and
  - i. Other environmental regulated media.

### D. Miscellaneous Services

In addition to emergency and non-emergency activities listed above, ACTA may require Consultant to coordinate with local law agencies, railroad police, Los Angeles County Homeless

Services Agency (LAHSA) and their teams in the collection and possible retention of materials related to Persons Experiencing Homelessness (PEH) while removing trash.

#### E. Required Equipment

Consultant shall have, or have immediate access to, the equipment necessary to perform emergency and non-emergency activities listed above in a professional and efficient manner.

## II. Professional Requirements

Consultant shall perform all tasks in accordance with all applicable local, state, and federal regulations. Consultant shall also perform services in compliance with ACTA policies and programs.

#### A. Disposal and Transportation

1. Consultant shall haul materials to a fully permitted waste disposal facility or facilities capable of handling non-hazardous and hazardous wastes, including California regulated wastes, Resource Conservation and Recovery Act (RCRA) Federal regulated wastes, and liquid/solid waste under the Toxic Substances Control Act.
2. All subcontractors and all identified hazardous or regulated waste recycling and disposal sites must be reviewed and approved for environmental acceptability and regulatory compliance with applicable state and federal laws, at the sole discretion of ACTA. All recycling, treatment, storage, and/or disposal facilities must operate under Federal and State licenses/permits.
3. The Firm shall ensure that all wastes handled, stored or transported are properly contained and labeled for shipment in accordance with all applicable State and Federal regulations.
4. Consultant shall provide transportation of hazardous waste to a treatment, storage or disposal facility by a licensed and permitted hazardous waste transporter.
5. Consultant shall furnish all labor, materials, and equipment as well as technical expertise, supervision, and management to effectively identify, package, clean up, and transport the various regulated, non-hazardous and hazardous waste for recycling, treatment, and/or disposal.

#### B. Manifest Documents

1. Consultant shall provide 3 properly prepared non-hazardous and hazardous waste manifest documents for waste to be transported to disposal or treatment facilities.
2. On non-emergency or routine jobs, Consultant shall coordinate

with an ACTA representative and hazardous waste disposal or treatment facilities to provide hazardous waste profiles and manifests to ACTA.

III. Project Management

Consultant shall work directly under the supervision of ACTA.

IV. Project Deliverables

Consultant shall submit a summary report describing all work assignments, including a running total of costs at the completion of each contract task order event. The report must be cumulative. ACTA will provide the format for the report, which will include at minimum: type and quantity of material, removal date/technique, disposal date and tipping receipt.



**Exhibit "B"**

**Contract Task Order**

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Contract Task Order No. \_\_\_\_

Project Name

Pursuant to Section 2 of Agreement No. \_\_\_\_\_, after receipt of a written Notice to Proceed signed by ACTA's CEO, Consultant shall proceed with the following:

| <u>Task Services</u> | <u>Authorized Amount</u> |
|----------------------|--------------------------|
|----------------------|--------------------------|

Consultant shall provide all required task, services, and deliverables in accordance with Exhibit A to Agreement No. \_\_\_\_\_.

Consultant shall complete the work within \_\_\_\_ calendar days from ACTA's transmittal of its written Notice to Proceed.

Consultant shall undertake the following MBE/WBE/SBE/VSBE/DVBE/OBE utilization in connection with its performance of this Contract Task Order No. \_\_\_\_:

Consultant acknowledges that the terms and conditions of Agreement No. \_\_\_\_\_ govern this Contract Task Order and that its signature below reflects its agreement with the terms and conditions of this Contract Task Order No. \_\_\_\_.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

ACCEPTED:

\_\_\_\_\_  
(Consultant Name)

Date:

SAMPLE

## Exhibit "C"

### Form of Notice to Proceed

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Notice to Proceed – Contract Task Order No. \_\_\_\_  
Project Name

This is to notify and direct you to commence performance of the subject Contract Task Order No. \_\_\_\_\_. Enclosed is your set of the executed Contract Task Order documents.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

Enclosure: Contract Task No. \_\_\_\_

## Exhibit D

### NRC Environmental Services Rates

| ITEM                           | UNIT OF MEASURE | QTY | RATE     |
|--------------------------------|-----------------|-----|----------|
| PROJECT MANAGER                | Hour            | 1   | \$100.00 |
| SUPERVISOR ST                  | Hour            | 1   | \$100.00 |
| SUPERVISOR OT                  | Hour            | 1   | \$150.00 |
| LABORER GROUP 1 ST             | Hour            | 1   | \$100.00 |
| LABORER GROUP 1 OT             | Hour            | 1   | \$135.00 |
| TEAMSTER GROUP 3 ST            | Hour            | 1   | \$105.00 |
| TEAMSTER GROUP 3 OT            | Hour            | 1   | \$145.00 |
| OPERATING ENGINEER GROUP 4 ST  | Hour            | 1   | \$130.00 |
| OPERATING ENGINEER GROUP 4 OT  | Hour            | 1   | \$170.00 |
| Truck, Gear, less than 1 ton   | Hour            | 1   | \$20.00  |
| Truck Gear, 2 ton - 5 ton      | Hour            | 1   | \$35.00  |
| Truck, Roll Off, Bobtail       | Hour            | 1   | \$69.00  |
| Loader, up to 4 yds            | Day             | 1   | \$650.00 |
| Roll Off Bin, up to 20 cu. Yd. | Day             | 1   | \$19.00  |
| LEVEL D PPE                    | Each            | 1   | \$37.50  |
| TRASH BAGS                     | Case            | 1   | \$35.00  |
| EQUIPMENT DIESEL FUEL          | Gallon          | 1   | \$6.50   |
| EQUIPMENT GASOLINE FUEL        | Gallon          | 1   | \$6.50   |
| Trash Debris Disposal          | Ton             | 1   | \$85.00  |

## EXHIBIT E

## Company Letterhead

Agreement No.:  
TIN:

Invoice Number:  
Date:  
ACTA PM:

Task number, Project Title  
Billing Period: Month/Day/Year to Month/Day/Year

| Authorized PD Budget | Current Invoice | Invoiced To-Date | PD Balance |
|----------------------|-----------------|------------------|------------|
| \$0.00               | \$0.00          | \$0.00           | \$0.00     |

| <b>PERSONNEL:</b>        | <b>Rate/Hour</b> | <b>Current Hours</b> | <b>Cumulative Hours</b> | <b>Current Total</b> |
|--------------------------|------------------|----------------------|-------------------------|----------------------|
| <i>Name &amp; Title</i>  | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| <b>Total Labor Cost:</b> |                  |                      |                         | <b>\$0.00</b>        |

| <b>SUBCONSULTANT:</b>            | <b>Activity</b> | <b>Current Total</b> |
|----------------------------------|-----------------|----------------------|
| Name of Subconsultant            | Work Performed  | \$0.00               |
| "                                |                 | \$0.00               |
| "                                |                 | \$0.00               |
| "                                |                 | \$0.00               |
| <b>Total Subconsultant Cost:</b> |                 | <b>\$0.00</b>        |

| REIMBURSABLE EXPENSES:                                   | Current<br>Total |
|--|------------------|
| Mileage, Parking, Car Rentals, Reproduction/Copies, etc. | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
|  | \$0.00           |
| Total Other Direct Cost:                                 | \$0.00           |

## REMIT PAYMENT TO:

Company Name

Address

City, ST Zip

**TOTAL AMOUNT NOW DUE: \$0.00**

Progress Report: Describe the work undertaken during this billing period. Identify accomplishments and challenges encountered. Provide other info as appropriate.

I certify under penalty of perjury that the above bill is just and correct according to the terms of Agmt #\_\_\_\_\_ and that payment has not been received.

\_\_\_\_\_  
Consultant Representative Name

Date:

\_\_\_\_\_  
APPROVED AS TO SCOPE AND  
AMOUNT OF WORK PERFORMED

\_\_\_\_\_  
ACTA PROJECT MANAGER

**Exhibit F**

**ALAMEDA CORRIDOR  
MONTHLY SUBCONTRACTOR MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of \_\_\_\_\_ for the referenced contract number.

Contract No. \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Committed SBE Participation Percentage \_\_\_\_\_

|    |                       |                |   | PROPOSED                               | ACTUALS                   |                        |  |
|----|-----------------------|----------------|---|--|---------------------------|------------------------|--|
|    | Name of Subcontractor | Work Performed | Certifications:*<br>SBE/VSBE/MBE/WBE/OBE/DVBE | Original<br>Proposed SBE<br>Percentage | Amount Paid<br>This Month | Amount Paid<br>to Date | Overall Contract<br>Amount<br>Percentage<br>(Paid to Date) |
| 1  |                       |                |   |  |                           |                        |  |
| 2  |                       |                |   |  |                           |                        |  |
| 3  |                       |                |   |  |                           |                        |  |
| 4  |                       |                |   |  |                           |                        |  |
| 5  |                       |                |   |  |                           |                        |  |
| 6  |                       |                |   |  |                           |                        |  |
| 7  |                       |                |   |  |                           |                        |  |
| 8  |                       |                |   |  |                           |                        |  |
| 9  |                       |                |   |  |                           |                        |  |
| 10 |                       |                |   |  |                           |                        |  |

\* Indicate all certifications held by each subcontractor

## EXHIBIT G

### **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 Agreement, it has been determined that the percentage of required small business participation will be 0%.**

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

**STATE OF CALIFORNIA            )**  
**) ss**  
**COUNTY OF LOS ANGELES      )**

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_

(1) \_\_\_\_\_  
Name of Signer (1)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and)

(2) \_\_\_\_\_  
Name of Signer (2)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature \_\_\_\_\_

Place Notary Seal and/or Stamp Above



## 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: \_\_\_\_\_

AGREEMENT NO. C0902

BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND  
OCEAN BLUE ENVIRONMENTAL SERVICES, INC.

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 OCEAN BLUE ENVIRONMENTAL SERVICES, INC., a California corporation, whose address is 425 Esther Street, Long Beach, California 98130 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist ACTA in removing trash and debris that accumulates along the Alameda Corridor ("Project"); and

WHEREAS, Consultant is an organization that provides these services, including, but not limited to those services required by ACTA and, by virtue of training and experience, is well-qualified to provide such services to ACTA; and

WHEREAS, ACTA does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Incorporation of Recitals

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant

2.1 All of the potential services Consultant shall perform for ACTA are set forth in Exhibit A attached hereto and hereinafter shall be referred to as "Scope of Work."

2.2 Consultant's performance of tasks shall occur as follows:

a. ACTA's Chief Executive Officer ("CEO") shall issue a written Contract Task Order ("CTO") in the form attached hereto as Exhibit B that specifies, without limitation ("Directive"): the task or subtask to be performed; the specific services required in connection with such task or subtask; the deliverables required in the performance of such task or subtask; the schedule for the performance of such task or subtask; authorized personnel who may perform the task or subtask; and authorized compensation for such task or subtask.

b. Consultant, to reflect its agreement with all the terms of such Directive, shall sign, date and return such CTO to ACTA.

c. Following ACTA's receipt of the CTO signed by Consultant, ACTA's CEO shall issue a Notice to Proceed in the form attached hereto as Exhibit C that has been signed by him and that authorizes Consultant to commence performance of the services contemplated by such CTO.

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that ACTA's CEO lacks authority to request the performance of any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work or a Directive, or in the absence of both a Directive and a Notice to Proceed, are performed as a volunteer and shall not be compensable under this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's CEO, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted on the effective date of this Agreement, whom ACTA's CEO may subsequently approve in writing ("Subconsultants"), or as listed on Directives. 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 it and its Subconsultants.

2.5 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. ACTA shall pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.6 ACTA's CEO shall resolve in his sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of a Directive, and the amount of compensation due. Upon written notice from ACTA's CEO, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to his reasonable satisfaction and at Consultant's sole cost and expense. Compliance with the requirements of this Section 2.6 is a condition to payment by ACTA of compensation to Consultant pursuant to this Agreement.

2.7 Consultant's representative responsible for administering this Agreement, Manny Ramirez ("Project Manager"), shall not be changed without ACTA's CEO's written approval. ACTA's CEO may, for any reason in his sole reasonable discretion,

require Consultant to substitute a new Project Manager. If ACTA requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

2.8 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.9 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.9 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice ACTA at the lower rate.

2.10 Consultant shall promptly consider and implement, to his reasonable satisfaction, any written comments of ACTA's CEO.

2.11 Consultant shall review information provided by ACTA. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of ACTA's CEO in writing.

2.12 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by ACTA's CEO. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in a Directive shall entitle ACTA to have services completed by others, shall obligate Consultant to pay ACTA ACTA's cost to undertake completion of such services, and shall authorize ACTA to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in a Directive shall result in economic losses to the ACTA, including, but not limited to, the timely bidding and awarding of contracts, completion of the Project in connection with which Consultant's services are rendered and the use of such project by ACTA, the users of the Alameda Corridor and the public.

### 3. Services To Be Performed By ACTA

3.1 ACTA shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by ACTA, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of ACTA's CEO, shall assist in completing the Scope of Work.

3.2 Consultant shall provide ACTA's CEO with reasonable advance written notice if it requires access to any premises under the control of ACTA. Subsequent 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 premises may be occupied or used by railroad companies, tenants or contractors of ACTA and that access rights granted by ACTA to Consultant shall be consistent with any such occupancy or use.

3.3 ACTA shall not be obligated to provide information and/or services except as specified in this Agreement.

#### 4. Effective Date and Term

4.1 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.

4.2 Commencing on the Agreement's effective date, this Agreement shall be in full force and effect until the earlier of the following occurs:

- a. Three (3) years has lapsed from the effective date of this Agreement;  
or
- b. ACTA's Board, in its sole discretion, terminates this Agreement pursuant to Section 6.

#### 5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant and Consultant shall accept a sum not to exceed Fifty Thousand Dollars (\$50,000). The total sum payable under this Agreement shall be determined by Directives, and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.

5.2 Compensation payable under this Agreement for payment for labor, travel, per diem, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses") are listed in Exhibit D. No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit D expressly so allows.

5.3 Compensation payable under this Agreement shall be on a (1) Fixed Fee, (2) Time and Materials, (3) Equal Payment or (4) any combination of the three, as may be more particularly specified in a Directive.

a. Fixed Fee. Lump sum compensation for satisfactory performance as may be specified in a particular Directive.

b. Time and Materials Fee. Consultant shall be paid based on the actual time expended in the performance of tasks using the applicable rates set forth in Exhibit D. Consultant will also be reimbursed for materials and other out-of-pocket expenses at cost. The rates identified in Exhibit D state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged unless authorized in Exhibit D.

c. Equal Payment Fee. Consultant shall be paid equal amounts over time throughout a particular Directive, up to the stated fixed amount.

5.4 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to ACTA for services performed during the prior month, accompanied by such records and receipts as may be required by Section 5.5. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and one (1) copy of each such invoice for payment in the format that contains the information specified in Exhibit E, and that includes 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. \_\_\_\_\_, 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.

\_\_\_\_\_  
(signed)

5.5 Where Consultant employs Subconsultants under this Agreement, Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit F) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

5.6 Consultant shall submit supporting documents with each invoice, which may include, but not be limited to, provider invoices, receipts, payrolls, and time sheets. Consultant is not required to submit support for direct costs items of \$25 or less. All invoices are subject to audit.

5.7 All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of ACTA business, the same may be reviewed and approved.

For payment and processing, all invoices shall be mailed to the following address:

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

5.8 If the term of this Agreement exceeds one (1) year and if the CEO so

consents in writing, Consultant may increase the rates set forth in Exhibit D after each twelve (12) months of service as long as such increases (a) are equal to or lower than the rates Consultant charges to other municipal or governmental entities and (b) represent an increase of no more than four percent (4%) over the rates charged during the prior twelve (12) month period. Such increases in rates, if any, shall not result in increases of the amount of total compensation payable under this Agreement set forth in Section 5.1. In the event of any such rate increase, Exhibit D shall be revised, replaced and renumbered as Exhibit "D-1," Exhibit "D-2," etc., as applicable.

## 6. Termination

6.1 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 ACTA's CEO 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.

6.2 Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. ACTA's CEO, in his sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly.

6.3 If Board so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to ACTA in an organized, usable form with all items properly labeled to the degree of detail specified by ACTA's CEO. No compensation shall be due Consultant until it complies with the requirements of this paragraph.

6.4 Pursuant to Section 5 of ACTA's Amended and Restated Joint Exercise of Powers Agreement, ACTA shall be restricted in its powers in the same manner as the City of Los Angeles is restricted in its exercise of similar powers. Therefore, this Agreement is subject to the provisions of the Los Angeles City Charter Section 320 which precludes ACTA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

ACTA, its board, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been

made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

## 7. Recordkeeping and Audit Rights

7.1 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. Consultant's books and records shall be readily accessible to and open for inspection and copying at the 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.

7.2 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 Section 7.2 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.

## 8. Consultant Is An Independent Contractor

Consultant, in the performance of the Scope of Work, 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.



## 9. Indemnification

9.1 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, arbitration proceedings, administrative proceedings, 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.

9.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including without limitation, Section 2782.8 of the California Civil Code), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said Section 2782.8, Consultant shall indemnify, protect, defend and hold harmless ACTA, its Board and any of its officers, agents, 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 Board, officers, agents, employees, assigns, or successors in interest that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, or the acts or omissions of an officer, employee, agent or Subconsultant, excepting only liability resulting from the negligence or willful misconduct of ACTA.

## 10. Insurance

### 10.1 Insurance procured by Consultant on Behalf of Consultant

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and as a condition precedent to the effectiveness of this Agreement, 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:

#### (a) 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 Five Million Dollars (\$5,000,000) 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 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, a severability of interest clause and have the railroad exclusion deleted. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(b) Automobile Liability Insurance

Automobile liability insurance 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) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage 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.

(c) 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. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. 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.

(d) Pollution Liability Insurance

Consultant shall procure and maintain throughout the term of this Agreement, at its cost, Pollution Liability 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 Rating is not available), with Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or death or property damage arising out of each accident or occurrence covering Consultant's services under this Agreement. 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 judgment, such retention or self-insurance is justified by the net worth of Consultant. Consultant's pollution liability shall include coverage for losses caused by pollution conditions that arise from the operation of Consultant described under the scope of services of this Agreement and include: (a) on-site and off-site coverage for bodily injury, sickness, disease, mental anguish or shock sustained by a person, including death; (b) on-site and off-site property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; (c) on-site and off-site defense including costs, charges and expenses incurred in the investigation adjustment or defense of claims for such compensatory damages.

Non-owned disposal site coverage shall also be provided if Consultant is handling, storing or generating hazardous materials or any material/substance otherwise regulated under governmental laws/regulations.

The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute with it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and severability of interest clause, have no exclusions for Contractual Liability, have no restrictions for Sole Liability of Consultant, and shall not contain any other exclusions contrary to this Agreement.

Each policy shall name ACTA, its Board, officers, agents and employees as Primary and Non-Contributory additional insureds.

#### 10.2 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 Section 9, 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 Section 10. 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 the Alameda Corridor Transportation Authority, 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. C0902, 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 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, 411 West Ocean Boulevard, 9<sup>th</sup> Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

### 10.3 Required Features of Coverages

Insurance procured by Consultant in connection with this Section 10 shall include the following features:

#### (a) 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.

#### (b) 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.

#### (c) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to ACTA as set forth herein.

#### (d) 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.

#### (e) 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 the 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 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.

#### 10.4 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.

#### 11. Personal Services Agreement

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 Section 2.3. 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.

#### 12. Confidentiality

Consultant shall not disclose any proprietary or confidential information of ACTA to any third party or parties during or after the term of this Agreement without the prior written consent of ACTA. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work 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.

#### 13. Affirmative Action

Consultant 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.

14. Small/Very Small Business Enterprise Program

It is the policy of ACTA to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE), 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 this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, 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, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit G.

15. 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.

16. Compliance with Applicable Laws

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, and local laws, ordinances, rules, regulations, and orders.

17. Trademarks, Copyrights and Patents

Consultant shall promptly and fully inform ACTA's CEO in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant 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 Consultant in the performance of this Agreement.

18. Proprietary Information

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 section 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 the 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.

19. Royalty-Free License

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.

20. ACTA's Disclosure Obligations

Consultant acknowledges that ACTA is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

21. 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, registered or certified mail, return receipt requested, and postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective

parties, notice to 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 the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

22. 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.

23. Titles and Captions

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section 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.

24. Modification in Writing

This Agreement shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this Agreement. Any such modifications are subject to all applicable approval processes required by, without limitation, ACTA's Amended and Restated Joint Exercise of Powers Agreement.

25. 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.

26. 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.

27. 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.

28. Integrated Agreement

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.**

29. Exhibits; Sections

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 sections are to sections of this Agreement unless stated otherwise.

30. Counterparts and Electronic Signatures

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 executed this Agreement on the date next to their signatures.

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael C. Leue, P.E.  
Chief Executive Officer

Attest: \_\_\_\_\_  
Secretary

OCEAN BLUE ENVIRONMENTAL  
SERVICES, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_, 2023

HYDEE FELDSTEIN SOTO, Los Angeles City Attorney

By \_\_\_\_\_  
Heather M. McCloskey, Deputy  
ACTA Co-General Counsel

Rev. 12-30-22

# EXHIBIT A

## Scope of Work

The Alameda Corridor Transportation Authority (“ACTA”) has occasional need for the removal of trash and debris along the Alameda Corridor twenty-mile right-of-way, including locations where ACTA maintains property adjacent to the tracks or at surface level above the trench (see Attachment 1).

ACTA requires the services of Consultant to collect and remove a variety of trash, debris and large items and legally haul and dispose of these at a qualified waste disposal location, in accordance with all local, state and federal regulations. The types of trash that may require removal include, but are not limited to:

- Household Trash;
- Furniture;
- Appliances;
- Building Materials;
- Automobile Parts

Consultant must be able to respond to ACTA’s request for trash removal within an agreed upon time frame. Trash removal is expected to typically occur on weekdays, but there may be need for weekend work under special circumstances.

### I. General

Consultant shall support and perform all phases of on-site trash removal on or adjacent to railroad tracks and Alameda Corridor Property, on an as needed basis.

#### A. Emergency Response

Emergency Response is the ability to respond to a request to remove trash on an emergency basis at any time, 24 hours per day, 7 days per week (including holidays), and provide containment and cleanup as required by local, state and federal regulatory agencies, and as directed by ACTA. Consultant shall have the ability to arrive on-scene within 30 to 45 minutes of notification.

#### B. Unidentified Waste

Unidentified wastes are unlabeled containers with unknown substances deposited on Alameda Corridor property that require removal.

1. Consultant shall have the ability to identify, package, and

transport the unidentified wastes deposited on Alameda Corridor properties (including on railroad tracks) or right-of-way for recycling, treatment, or disposal.

2. Response to these work requests will usually be required during normal working hours.

### C. Waste Management

Waste Management is the ability to identify, categorize, remove, package and recycle, or dispose of hazardous, non-hazardous, and regulated waste that are generated through the normal work process of maintaining property or equipment operated and maintained by ACTA.

1. Response to these removal requests will usually be required during normal working hours.
2. Consultant shall be required to be on-site at a facility operated and maintained by ACTA at a mutually agreed-upon time with an authorized ACTA representative.
3. Waste management services may include, but are not limited to:
  - a. Collecting and removal of debris;
  - b. Consolidating and packaging of hazardous materials;
  - c. Isolating and packaging unidentified materials;
  - d. Characterizing and profiling of waste prior to disposal; and
  - e. Transporting waste for disposal.
4. Regulated and/or hazardous materials include, but are not limited to:
  - a. Asbestos, crude oil and petroleum products, including fuel oil, mineral oil, gasoline, diesel;
  - b. Corrosive liquids, including acid, and alkaline solutions;
  - c. Polychlorinated Biphenyls (PCBs) and PCB-contaminated materials;
  - d. Mercury, lead, and other metals;
  - e. Waste tires;
  - f. Treated wood;
  - g. Bio-hazard waste;
  - h. Sewage; and
  - i. Other environmental regulated media.

### D. Miscellaneous Services

In addition to emergency and non-emergency activities listed above, ACTA may require Consultant to coordinate with local law agencies, railroad police, Los Angeles County Homeless

Services Agency (LAHSA) and their teams in the collection and possible retention of materials related to Persons Experiencing Homelessness (PEH) while removing trash.

#### E. Required Equipment

Consultant shall have, or have immediate access to, the equipment necessary to perform emergency and non-emergency activities listed above in a professional and efficient manner.

## II. Professional Requirements

Consultant shall perform all tasks in accordance with all applicable local, state, and federal regulations. Consultant shall also perform services in compliance with ACTA policies and programs.

#### A. Disposal and Transportation

1. Consultant shall haul materials to a fully permitted waste disposal facility or facilities capable of handling non-hazardous and hazardous wastes, including California regulated wastes, Resource Conservation and Recovery Act (RCRA) Federal regulated wastes, and liquid/solid waste under the Toxic Substances Control Act.
2. All subcontractors and all identified hazardous or regulated waste recycling and disposal sites must be reviewed and approved for environmental acceptability and regulatory compliance with applicable state and federal laws, at the sole discretion of ACTA. All recycling, treatment, storage, and/or disposal facilities must operate under Federal and State licenses/permits.
3. The Firm shall ensure that all wastes handled, stored or transported are properly contained and labeled for shipment in accordance with all applicable State and Federal regulations.
4. Consultant shall provide transportation of hazardous waste to a treatment, storage or disposal facility by a licensed and permitted hazardous waste transporter.
5. Consultant shall furnish all labor, materials, and equipment as well as technical expertise, supervision, and management to effectively identify, package, clean up, and transport the various regulated, non-hazardous and hazardous waste for recycling, treatment, and/or disposal.

#### B. Manifest Documents

1. Consultant shall provide 3 properly prepared non-hazardous and hazardous waste manifest documents for waste to be transported to disposal or treatment facilities.
2. On non-emergency or routine jobs, Consultant shall coordinate

with an ACTA representative and hazardous waste disposal or treatment facilities to provide hazardous waste profiles and manifests to ACTA.

III. Project Management

Consultant shall work directly under the supervision of ACTA.

IV. Project Deliverables

Consultant shall submit a summary report describing all work assignments, including a running total of costs at the completion of each contract task order event. The report must be cumulative. ACTA will provide the format for the report, which will include at minimum: type and quantity of material, removal date/technique, disposal date and tipping receipt.

**Exhibit "B"**

**Contract Task Order**

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Contract Task Order No. \_\_\_\_

Project Name

Pursuant to Section 2 of Agreement No. \_\_\_\_\_, after receipt of a written Notice to Proceed signed by ACTA's CEO, Consultant shall proceed with the following:

| <u>Task Services</u> | <u>Authorized Amount</u> |
|----------------------|--------------------------|
|----------------------|--------------------------|

Consultant shall provide all required task, services, and deliverables in accordance with Exhibit A to Agreement No. \_\_\_\_\_.

Consultant shall complete the work within \_\_\_\_ calendar days from ACTA's transmittal of its written Notice to Proceed.

Consultant shall undertake the following MBE/WBE/SBE/VSBE/DVBE/OBE utilization in connection with its performance of this Contract Task Order No. \_\_\_\_:

Consultant acknowledges that the terms and conditions of Agreement No. \_\_\_\_\_ govern this Contract Task Order and that its signature below reflects its agreement with the terms and conditions of this Contract Task Order No. \_\_\_\_.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

ACCEPTED:

\_\_\_\_\_  
(Consultant Name)



Date:

SAMPLE

## Exhibit "C"

### Form of Notice to Proceed

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Notice to Proceed – Contract Task Order No. \_\_\_\_  
Project Name

This is to notify and direct you to commence performance of the subject Contract Task Order No. \_\_\_\_\_. Enclosed is your set of the executed Contract Task Order documents.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

Enclosure: Contract Task No. \_\_\_\_



925 West Esther Street  
Long Beach, CA 90813  
Ph: (562) 624-4120  
Fx: (562) 624-4127

#### ACTA EFFECTIVE RATES

##### **1. HAZARDOUS WASTE-TRAINED PERSONNEL**

|   |        |        |
|---|--------|--------|
| PROJECT MANAGER S/T                         | 147.52 | HOURLY |
| PROJECT MANAGER O/T                         | 193.41 | HOURLY |
| PROJECT MANAGER P/T                         | 193.41 | HOURLY |
| SUPERVISOR S/T                              | 113.64 | HOURLY |
| SUPERVISOR O/T                              | 135.50 | HOURLY |
| SUPERVISOR P/T                              | 155.17 | HOURLY |
| CHEMIST/INDUSTRIAL HYGIENIST S/T            | 226.19 | HOURLY |
| CHEMIST/INDUSTRIAL HYGIENIST STRAIGHT O/T   | 258.98 | HOURLY |
| CHEMIST/INDUSTRIAL HYGIENIST STRAIGHT P/T   | 258.98 | HOURLY |
| LEAD TECHNICIAN S/T                         | 78.68  | HOURLY |
| LEAD TECHNICIAN O/T                         | 114.74 | HOURLY |
| LEAD TECHNICIAN P/T                         | 149.70 | HOURLY |
| EQUIPMENT OPERATOR S/T                      | 75.40  | HOURLY |
| EQUIPMENT OPERATOR O/T                      | 113.64 | HOURLY |
| EQUIPMENT OPERATOR P/T                      | 145.33 | HOURLY |
| TECHNICIAN S/T                              | 71.03  | HOURLY |
| TECHNICIAN O/T                              | 100.53 | HOURLY |
| TECHNICIAN P/T                              | 131.13 | HOURLY |
| ILWU TECH (INT. LONGSHORE & WHSE UNION) S/T | 99.44  | HOURLY |
| ILWU TECH (INT. LONGSHORE & WHSE UNION) O/T | 148.61 | HOURLY |
| ILWU TECH (INT. LONGSHORE & WHSE UNION) P/T | 199.97 | HOURLY |

##### **2. CERTIFIED HAZARDOUS WASTE TRANSPORTATION VEHICLES**

|   |        |        |
|---|--------|--------|
| UTILITY TRUCK 4X4 W/TRAFFIC CONTROL LIGHTS & LIFTGATE | 62.29  | HOURLY |
| GEAR TRUCK W/ LIFTGATE                                | 62.29  | HOURLY |
| EMERGENCY RESPONSE UNIT - LARGE                       | 289.57 | HOURLY |
| EMERGENCY RESPONSE UNIT - SMALL                       | 201.06 | HOURLY |
| CREW VAN  | 54.64  | HOURLY |
| BOB CAT W/SOLID TIRES                                 | 67.75  | HOURLY |
| VACUUM TRAILER - 20 BBL                               | 67.75  | HOURLY |
| VACUUM TRUCK - 70 BBL W/ ROPER PUMP*                  | 166.09 | HOURLY |
| VACUUM TRUCK - 120 BBL*                               | 190.13 | HOURLY |
| VACUUM TRUCK - 120 BBL STAINLESS STEEL*               | 215.27 | HOURLY |
| AIR EXCAVATOR*  | 166.09 | HOURLY |
| HYDRO EXCAVATOR*                                      | 308.15 | HOURLY |
| OMNI VAC - 85 BBL*                                    | 308.15 | HOURLY |
| JETTER / VACTOR COMBO UNIT*                           | 308.15 | HOURLY |
| ROLL-OFF TRUCK*                                       | 166.09 | HOURLY |
| ROLL-OFF TRUCK AND TRAILER*                           | 190.13 | HOURLY |
| DUMP TRUCK - 10 WHEEL*                                | 116.92 | HOURLY |
| TRASH COMPACTOR*                                      | 231.66 | HOURLY |
| 25' BOX VAN*  | 116.92 | HOURLY |
| 45' BOX VAN*  | 135.50 | HOURLY |
| 45' FLAT BED*   | 135.50 | HOURLY |
| 25' EQUIPMENT TRAILER                                 | 43.71  | HOURLY |
| STREET SWEEPER  | 109.27 | HOURLY |

"\*" DENOTES EQUIPMENT INCLUDING OPERATOR. THESE WILL BE CHARGED AN ADDITIONAL \$29.00 PER HOUR FOR OVERTIME AND \$39.00 PER HOUR FOR PREMIUM TIME.



925 West Esther Street  
Long Beach, CA 90813  
Ph: (562) 624-4120  
Fx: (562) 624-4127

#### ACTA EFFECTIVE RATES

### **3. RESPIRATORY / CONFINED SPACE ENTRY EQUIPMENT**

|  |        |       |
|--|--------|-------|
| SELF-CONTAINED BREATHING APPARATUS (30 MIN.) | 169.37 | DAILY |
| 6-PACK BREATHING AIR BOTTLES                 | 339.84 | DAILY |
| 5-MINUTE EGRESS AIR BOTTLE                   | 48.08  | DAILY |
| TRIPOD W/DOUBLE WINCHES                      | 303.78 | DAILY |
| FULL BODY HARNESS W/ SHOCK ABSORBER          | 43.71  | DAILY |
| COPPUS BLOWER                                | 245.86 | DAILY |
| 4-GAS AIR MONITOR                            | 372.62 | DAILY |
| PID METER                                    | 515.77 | DAILY |
| MERCURY VAPOR ANALYZER                       | 645.80 | DAILY |
| OVA MONITOR                                  | 451.30 | DAILY |
| PERSONAL 4 GAS METER                         | 308.15 | DAILY |
| ELECTRIC BLOWER                              | 99.44  | DAILY |

### **4. TRAFFIC CONTROL**

|  |        |       |
|--|--------|-------|
| ARROW BOARD                              | 276.46 | DAILY |
| PORTABLE DECON STATION W/ARROWBOARD      | 369.34 | DAILY |
| BARRICADES W/ REFLECTORS, EACH           | 40.43  | DAILY |
| DELINEATOR/REFLECTIVE, EACH              | 2.19   | DAILY |
| NO TURN RIGHT OR LEFT SIGNS, EACH        | 19.67  | DAILY |
| TRAFFIC CONE/REFLECTIVE, EACH            | 3.28   | DAILY |
| TRAFFIC CONTROL SIGNS 48"X48"/REFLECTIVE | 45.89  | DAILY |

### **5. CLEANING EQUIPMENT**

|  |        |        |
|--|--------|--------|
| AIR COMPRESSOR                           | 52.45  | HOURLY |
| CHEMICAL DIAPHRAGM PUMP                  | 387.92 | DAILY  |
| DECONTAMINATION STATION                  | 264.44 | DAILY  |
| DIAPHRAGM PUMP                           | 277.55 | DAILY  |
| SUCTION/DISCHARGE HOSE (PER FOOT)        | 1.09   | DAILY  |
| LAYFLAT HOSE (PER FOOT)                  | 1.09   | DAILY  |
| HYDROBLASTER                             | 97.25  | HOURLY |
| INTRINSICALLY SAFE PUMP FOR FUEL TANKS   | 135.50 | DAILY  |
| STEAM MACHINE 1,000 PSI 22 GPM           | 87.42  | HOURLY |
| STEAM MACHINE 3,500 PSI 6 GPM            | 75.40  | HOURLY |
| ENGINE DRIVEN PUMPS                      | 636.54 | DAILY  |
| PORTABLE TRASH PUMP                      | 258.98 | DAILY  |
| SUBMERSIBLE PUMP                         | 229.47 | DAILY  |
| AIR SCRUBBERS PORTABLE                   | 215.27 | DAILY  |
| HEPA FILTERS FOR SCRUBBERS               | 160.63 | EACH   |
| 55 GALLON CARBON SCRUBBER FOR VAC TRUCKS | 245.86 | DAILY  |
| 3 STALL DECONTAMINATION SHOWER           | 369.34 | DAILY  |

### **6. PORTABLE STORAGE UNITS**

|                         |       |       |
|-------------------------|-------|-------|
| 20-YARD BIN, OPEN TOP   | 31.69 | DAILY |
| 20-YARD BIN, CLOSED TOP | 38.25 | DAILY |
| 40-YARD BIN, OPEN TOP   | 31.69 | DAILY |
| 40-YARD BIN, CLOSED TOP | 40.43 | DAILY |
| 4" TANK MANIFOLD        | 24.04 | DAILY |
| BIN LINERS              | 65.56 | EACH  |

### **7. OIL SPILL EQUIPMENT**

|  |        |       |
|--|--------|-------|
| 20' DRUM & SUPPLY TRAILER W/ 4' SIDES & 12,000 GVW | 258.98 | DAILY |
|--|--------|-------|



925 West Esther Street

Long Beach, CA 90813

Ph: (562) 624-4120

Fx: (562) 624-4127

#### ACTA EFFECTIVE RATES

|  |         |            |
|--|---------|------------|
| BOOM TRAILER (STANDBY) W/ 1500' OF 8"x12" BOOM | 193.41  | DAILY      |
| BOOM 8"x12" (DEPLOYED)                         | 2.19    | PER FT/DAY |
| BOOM 4"x12" (DEPLOYED)                         | 1.09    | PER FT/DAY |
| 22' TOW/SPILL CONTROL BOAT W/ 200 HP MOTOR     | 166.09  | HOURLY     |
| 22' x 8' SELF POWERED BARGE                    | 111.46  | HOURLY     |
| 19' TOOL SPILL BOAT W/90HP                     | 111.46  | HOURLY     |
| 17' TOW/SPILL CONTROL BOAT W/ 40 HP MOTOR      | 92.88   | HOURLY     |
| 14' TOW/SPILL CONTROL BOAT W/ 25 HP MOTOR      | 73.21   | HOURLY     |
| 12' PUNTS                                      | 43.71   | HOURLY     |
| 12' PUNTS W/ 5HP MOTOR                         | 54.64   | HOURLY     |
| SPLASH ZONE 2-PART SEALER                      | 203.25  | PER GALLON |
| 25 LBS ANCHORS W/ 15' CHAIN                    | 18.58   | DAILY      |
| 15 LBS ANCHORS W/ 10' CHAIN                    | 13.11   | DAILY      |
| 24" BOEYS                                      | 18.58   | DAILY      |
| EMERGENCY RESPONSE TRAILER                     | 581.33  | DAILY      |
| ROPE MOP SKIMMER                               | 193.41  | HOURLY     |
| DRUM SKIMMER TDS-136 W/ POWER PACK             | 258.98  | HOURLY     |
| SKIM-PAK SERIES 4000 W/ CONTROL SYSTEM         | 78.68   | HOURLY     |
| SKIMMER TRAILER                                | 258.98  | DAILY      |
| ABSORBENT BOOM TRAILER                         | 193.41  | DAILY      |
| ATV (ALL TERRAIN VEHICLE) W/TRAILER            | 337.65  | DAILY      |
| FORKLIFT TRAILER                               | 122.39  | DAILY      |
| <b><u>8. MATERIALS</u></b>                     |         |            |
| 10 GALLON DOT DRUM, STEEL                      | 62.29   | EACH       |
| 15 GALLON DOT DRUM, POLY                       | 62.29   | EACH       |
| 16 GALLON DOT DRUM, STEEL                      | 62.29   | EACH       |
| 20 GALLON DOT DRUM, STEEL                      | 65.56   | EACH       |
| 30 GALLON DOT DRUM, POLY                       | 65.56   | EACH       |
| 30 GALLON DOT DRUM, STEEL                      | 65.56   | EACH       |
| 5 GALLON DOT DRUM                              | 22.95   | EACH       |
| 55 GALLON DOT DRUM, POLY                       | 76.49   | EACH       |
| 55 GALLON DOT DRUM, STEEL                      | 75.40   | EACH       |
| 55 GALLON DOT DRUM, BIO                        | 49.17   | EACH       |
| 85 GALLON DRUM, OVERPAK, STEEL                 | 276.46  | EACH       |
| 95 GALLON DRUM, OVERPAK, POLY                  | 276.46  | EACH       |
| ACID SPILFYTER NEUTRALIZER PER GALLON          | 96.16   | EACH       |
| BASE SPILFYTER NEUTRALIZER PER GALLON          | 96.16   | EACH       |
| BIO-SOLVE (HYDROCARBON ENCAPSULANT)            | 45.89   | PER GALLON |
| BLEACH   | 5.46    | PER GALLON |
| CHEMICAL POLY TOTES                            | 398.85  | EACH       |
| CHLOR-D-TECT Q4000                             | 22.95   | EACH       |
| CITRI-CLEAN, 55 GALLON                         | 1032.63 | PER DRUM   |
| DIESEL FUEL (EQUIPMENT)                        | 6.56    | PER GALLON |
| DRUM LINER                                     | 3.28    | EACH       |
| DUCT TAPE                                      | 7.65    | PER ROLL   |
| FACE SHIELD                                    | 16.39   | EACH       |
| HAND AUGER                                     | 108.18  | DAILY      |
| HEPA VACUUM FILTER PROTECTORS                  | 25.13   | EACH       |



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#### ACTA EFFECTIVE RATES

|  |        |            |
|--|--------|------------|
| HEPA VACUUM REPLACEMENT BAGS                         | 25.13  | EACH       |
| OIL SORBENT POM POMS                                 | 71.03  | PER BALE   |
| PLASTIC BAGS   | 92.88  | PER BOX    |
| PLASTIC SHEETING                                     | 92.88  | PER ROLL   |
| RAGS, 50 LB BOX                                      | 84.14  | PER BOX    |
| ROPE 1/2 POLY, 100' ROLL                             | 40.43  | PER ROLL   |
| ROPE 5/8 POLY, 100' SPOOL                            | 45.89  | PER ROLL   |
| SAMPLE JARS - 1QT                                    | 16.39  | EACH       |
| SAND BAGS  | 4.37   | EACH       |
| SHRINK WRAP  | 38.25  | ROLL       |
| SIMPLE GREEN   | 16.39  | PER GALLON |
| SODA ASH   | 7.65   | PER GALLON |
| SORBENT BOOM W/ JELLING MATERIAL                     | 515.77 | PER BALE   |
| SORBENT BOOM, 8"x10"                                 | 67.75  | EACH       |
| SORBENT PADS 18"x18"x1/4" (200/BALE)                 | 111.46 | PER BALE   |
| SUPERFINE, 25 LB BAG                                 | 22.95  | PER BAG    |
| TRIWALL BOXES  | 193.41 | EACH       |
| VACTOR FLEX HOSE 4"                                  | 2.19   | PER FOOT   |
| VACTOR FLEX HOSE 6"                                  | 3.28   | PER FOOT   |
| <b><u>9. TOOLS AND OTHER EQUIPMENT</u></b>           |        |            |
| BIO-HAZARD "BLOOD" SPILL KIT                         | 128.94 | EACH       |
| BOAT HOOKS 3'-9' TELESCOPING                         | 8.74   | DAILY      |
| BOBCAT SWEEPER ATTACHMENT                            | 273.18 | DAILY      |
| CHEST WADERS   | 76.49  | DAILY      |
| 14 PORTABLE GAS POWERED ABRASIVE SAW                 | 184.67 | DAILY      |
| COM-A-LONG - 4000 LBS                                | 7.65   | DAILY      |
| CUTTING TORCH  | 186.86 | DAILY      |
| DRUM SAMPLING ROD (GLASS)                            | 8.74   | EACH       |
| DRUM VACUUM - 55 GALLON                              | 148.61 | DAILY      |
| EXTENSION LADDER                                     | 16.39  | DAILY      |
| EYEWASH STATION                                      | 40.43  | DAILY      |
| FIRE PROTECTION SUIT (1500 DEGREE PROTECTION FACTOR) | 276.46 | DAILY      |
| FORK LIFT  | 273.18 | DAILY      |
| GENERATOR, 10KV TRAILER MOUNTED                      | 43.71  | HOURLY     |
| GENERATOR, 5500 WATTS                                | 154.07 | DAILY      |
| HAND TOOLS   | 65.56  | DAILY      |
| HAND WASHING STATION                                 | 62.29  | DAILY      |
| HAZ-CAT KIT  | 25.13  | PER TEST   |
| HEAVY DUTY JETTER NOZZLES                            | 292.85 | DAILY      |
| HEPA VACUUM (DRY)                                    | 193.41 | DAILY      |
| HIP WADERS   | 65.56  | DAILY      |
| HUDSON SPRAYER                                       | 25.13  | DAILY      |
| JACK HAMMER 90 LBS                                   | 154.07 | DAILY      |
| LIFE JACKETS   | 19.67  | DAILY      |
| LIGHT STAND (2 BULBS)                                | 45.89  | DAILY      |
| LIGHT TOWER (4 BULBS)                                | 369.34 | DAILY      |
| MEALS ON SPILLS                                      | 8.74   | EACH       |
| MERCURY VACUUM                                       | 645.80 | DAILY      |



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#### ACTA EFFECTIVE RATES

|   |        |         |
|---|--------|---------|
| NON-SPARKING COLD CUTTER / RIVET BUSTER   | 122.39 | DAILY   |
| NON-SPARKING COLD CUTTER TIPS   | 38.25  | EACH    |
| PER DIEM ALLOWANCE ON TRAVEL  | 203.25 | DAILY   |
| PICKS "MINERS"  | 3.28   | DAILY   |
| PLUG & DIKE, 1 LB CAN   | 31.69  | EACH    |
| POLY SIPHON (POGO) PUMP   | 24.04  | EACH    |
| PORTABLE RESTROOM W/SINK  | 193.41 | DAILY   |
| PROFILING FEE (PER WASTE STREAM)  | 97.25  | EACH    |
| RADIO 2-WAY, INTRINSICALLY SAFE   | 51.36  | DAILY   |
| SAWZALL   | 102.72 | DAILY   |
| SKIL SAW  | 45.89  | DAILY   |
| STEEL SPIKES, 36"   | 6.56   | DAILY   |
| TRANSFER HOSES, 1 - 4"  | 54.64  | DAILY   |
| TRUCK RAMPS (30,000 LBS)  | 369.34 | DAILY   |
| VAPOR TIGHT DROP LIGHTS   | 193.41 | DAILY   |
| VENTILATION FAN   | 148.61 | DAILY   |
| WATER METER   | 323.45 | DAILY   |
| WATER TANK TRAILER W/ PUMP  | 437.09 | DAILY   |
| DRUM DOLLY  | 30.60  | DAILY   |
| <b><u>10. PERSONAL PROTECTIVE EQUIPMENT (PPE)</u></b>   |        |         |
| LEVEL "A" - FULLY ENCAPSULATED GAS-TIGHT SUIT<br>WITH SCBA  | 614.11 | PER SET |
| LEVEL "B" - POLY-TYVEK THROUGH FULLY ENCAPSU-<br>LATED SUIT, BUT NOT GAS TIGHT W/SCBA                         | 193.41 | PER SET |
| LEVEL "C" - TYVEK THROUGH SARANEX SUIT W/ AIR<br>PURIFYING RESPIRATOR   | 84.14  | PER SET |
| LEVEL "D" - TYVEK, POLY-TYVEK, COVERALL OR<br>RAINGEAR SUIT WITH GLOVES, BOOTS,<br>HARDHAT AND SAFETY GLASSES | 40.43  | PER SET |

## EXHIBIT E

## Company Letterhead

Agreement No.:  
TIN:

Invoice Number:  
Date:  
ACTA PM:

Task number, Project Title  
Billing Period: Month/Day/Year to Month/Day/Year

| Authorized PD Budget | Current Invoice | Invoiced To-Date | PD Balance |
|----------------------|-----------------|------------------|------------|
| \$0.00               | \$0.00          | \$0.00           | \$0.00     |

| <b>PERSONNEL:</b>        | <b>Rate/Hour</b> | <b>Current Hours</b> | <b>Cumulative Hours</b> | <b>Current Total</b> |
|--------------------------|------------------|----------------------|-------------------------|----------------------|
| <i>Name &amp; Title</i>  | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| <b>Total Labor Cost:</b> |                  |                      |                         | <b>\$0.00</b>        |

| <b>SUBCONSULTANT:</b>            | <b>Activity</b> | <b>Current Total</b> |
|----------------------------------|-----------------|----------------------|
| Name of Subconsultant            | Work Performed  | \$0.00               |
| "                                |                 | \$0.00               |
| "                                |                 | \$0.00               |
| "                                |                 | \$0.00               |
| <b>Total Subconsultant Cost:</b> |                 | <b>\$0.00</b>        |

| REIMBURSABLE EXPENSES:                                   | Current<br>Total |
|--|------------------|
| Mileage, Parking, Car Rentals, Reproduction/Copies, etc. | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
|  | \$0.00           |
| Total Other Direct Cost:                                 | \$0.00           |

## REMIT PAYMENT TO:

Company Name

Address

City, ST Zip

**TOTAL AMOUNT NOW DUE: \$0.00**

Progress Report: Describe the work undertaken during this billing period. Identify accomplishments and challenges encountered. Provide other info as appropriate.

I certify under penalty of perjury that the above bill is just and correct according to the terms of Agmt #\_\_\_\_\_ and that payment has not been received.

\_\_\_\_\_  
Consultant Representative Name

Date:

\_\_\_\_\_  
APPROVED AS TO SCOPE AND  
AMOUNT OF WORK PERFORMED

\_\_\_\_\_  
ACTA PROJECT MANAGER



**Exhibit F**

**ALAMEDA CORRIDOR  
MONTHLY SUBCONTRACTOR MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of \_\_\_\_\_ for the referenced contract number.

Contract No. \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Committed SBE Participation Percentage \_\_\_\_\_

|    |                       |                |   | PROPOSED                               | ACTUALS                   |                        |  |
|----|-----------------------|----------------|---|--|---------------------------|------------------------|--|
|    | Name of Subcontractor | Work Performed | Certifications:*<br>SBE/VSBE/MBE/WBE/OBE/DVBE | Original<br>Proposed SBE<br>Percentage | Amount Paid<br>This Month | Amount Paid<br>to Date | Overall Contract<br>Amount<br>Percentage<br>(Paid to Date) |
| 1  |                       |                |   |  |                           |                        |  |
| 2  |                       |                |   |  |                           |                        |  |
| 3  |                       |                |   |  |                           |                        |  |
| 4  |                       |                |   |  |                           |                        |  |
| 5  |                       |                |   |  |                           |                        |  |
| 6  |                       |                |   |  |                           |                        |  |
| 7  |                       |                |   |  |                           |                        |  |
| 8  |                       |                |   |  |                           |                        |  |
| 9  |                       |                |   |  |                           |                        |  |
| 10 |                       |                |   |  |                           |                        |  |

\* Indicate all certifications held by each subcontractor

## EXHIBIT G

### **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 Agreement, it has been determined that the percentage of required small business participation will be 0%.**

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

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES )

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_

(1) \_\_\_\_\_  
Name of Signer (1)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and)

(2) \_\_\_\_\_  
Name of Signer (2)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature \_\_\_\_\_

Place Notary Seal and/or Stamp Above

## 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: \_\_\_\_\_

AGREEMENT NO. C0903

BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND  
SCREAMIN EAGLE SERVICES INC.

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 SCREAMIN EAGLE SERVICES INC., a California corporation, whose address is 1119 South Alameda Street, Compton, California 90220 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist ACTA in removing trash and debris that accumulates along the Alameda Corridor ("Project"); and

WHEREAS, Consultant is an organization that provides these services, including, but not limited to those services required by ACTA and, by virtue of training and experience, is well-qualified to provide such services to ACTA; and

WHEREAS, ACTA does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Incorporation of Recitals

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant

2.1 All of the potential services Consultant shall perform for ACTA are set forth in Exhibit A attached hereto and hereinafter shall be referred to as "Scope of Work."

2.2 Consultant's performance of tasks shall occur as follows:

a. ACTA's Chief Executive Officer ("CEO") shall issue a written Contract Task Order ("CTO") in the form attached hereto as Exhibit B that specifies, without limitation ("Directive"): the task or subtask to be performed; the specific services required in connection with such task or subtask; the deliverables required in the performance of such task or subtask; the schedule for the performance of such task or subtask; authorized personnel who may perform the task or subtask; and authorized compensation for such task or subtask.

b. Consultant, to reflect its agreement with all the terms of such Directive, shall sign, date and return such CTO to ACTA.

c. Following ACTA's receipt of the CTO signed by Consultant, ACTA's CEO shall issue a Notice to Proceed in the form attached hereto as Exhibit C that has been signed by him and that authorizes Consultant to commence performance of the services contemplated by such CTO.

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that ACTA's CEO lacks authority to request the performance of any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work or a Directive, or in the absence of both a Directive and a Notice to Proceed, are performed as a volunteer and shall not be compensable under this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's CEO, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted on the effective date of this Agreement, whom ACTA's CEO may subsequently approve in writing ("Subconsultants"), or as listed on Directives. 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 it and its Subconsultants.

2.5 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. ACTA shall pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.6 ACTA's CEO shall resolve in his sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of a Directive, and the amount of compensation due. Upon written notice from ACTA's CEO, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to his reasonable satisfaction and at Consultant's sole cost and expense. Compliance with the requirements of this Section 2.6 is a condition to payment by ACTA of compensation to Consultant pursuant to this Agreement.

2.7 Consultant's representative responsible for administering this Agreement, Andrew Thompson ("Project Manager"), shall not be changed without ACTA's CEO's written approval. ACTA's CEO may, for any reason in his sole reasonable discretion,

require Consultant to substitute a new Project Manager. If ACTA requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

2.8 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.9 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.9 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice ACTA at the lower rate.

2.10 Consultant shall promptly consider and implement, to his reasonable satisfaction, any written comments of ACTA's CEO.

2.11 Consultant shall review information provided by ACTA. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of ACTA's CEO in writing.

2.12 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by ACTA's CEO. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in a Directive shall entitle ACTA to have services completed by others, shall obligate Consultant to pay ACTA ACTA's cost to undertake completion of such services, and shall authorize ACTA to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in a Directive shall result in economic losses to the ACTA, including, but not limited to, the timely bidding and awarding of contracts, completion of the Project in connection with which Consultant's services are rendered and the use of such project by ACTA, the users of the Alameda Corridor and the public.

### 3. Services To Be Performed By ACTA

3.1 ACTA shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by ACTA, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of ACTA's CEO, shall assist in completing the Scope of Work.

3.2 Consultant shall provide ACTA's CEO with reasonable advance written notice if it requires access to any premises under the control of ACTA. Subsequent 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 premises may be occupied or used by railroad companies, tenants or contractors of ACTA and that access rights granted by ACTA to Consultant shall be consistent with any such occupancy or use.

3.3 ACTA shall not be obligated to provide information and/or services except as specified in this Agreement.

#### 4. Effective Date and Term

4.1 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.

4.2 Commencing on the Agreement's effective date, this Agreement shall be in full force and effect until the earlier of the following occurs:

- a. Three (3) years has lapsed from the effective date of this Agreement;  
or
- b. ACTA's Board, in its sole discretion, terminates this Agreement pursuant to Section 6.

#### 5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant and Consultant shall accept a sum not to exceed Fifty Thousand Dollars (\$50,000). The total sum payable under this Agreement shall be determined by Directives, and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.

5.2 Compensation payable under this Agreement for payment for labor, travel, per diem, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses") are listed in Exhibit D. No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit D expressly so allows.

5.3 Compensation payable under this Agreement shall be on a (1) Fixed Fee, (2) Time and Materials, (3) Equal Payment or (4) any combination of the three, as may be more particularly specified in a Directive.

a. Fixed Fee. Lump sum compensation for satisfactory performance as may be specified in a particular Directive.

b. Time and Materials Fee. Consultant shall be paid based on the actual time expended in the performance of tasks using the applicable rates set forth in Exhibit D. Consultant will also be reimbursed for materials and other out-of-pocket expenses at cost. The rates identified in Exhibit D state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged unless authorized in Exhibit D.



c. Equal Payment Fee. Consultant shall be paid equal amounts over time throughout a particular Directive, up to the stated fixed amount.

5.4 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to ACTA for services performed during the prior month, accompanied by such records and receipts as may be required by Section 5.5. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and one (1) copy of each such invoice for payment in the format that contains the information specified in Exhibit E, and that includes 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. \_\_\_\_\_, 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.

\_\_\_\_\_  
(signed)

5.5 Where Consultant employs Subconsultants under this Agreement, Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit F) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

5.6 Consultant shall submit supporting documents with each invoice, which may include, but not be limited to, provider invoices, receipts, payrolls, and time sheets. Consultant is not required to submit support for direct costs items of \$25 or less. All invoices are subject to audit.

5.7 All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of ACTA business, the same may be reviewed and approved.

For payment and processing, all invoices shall be mailed to the following address:

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

5.8 If the term of this Agreement exceeds one (1) year and if the CEO so consents in writing, Consultant may increase the rates set forth in Exhibit D after each

twelve (12) months of service as long as such increases (a) are equal to or lower than the rates Consultant charges to other municipal or governmental entities and (b) represent an increase of no more than four percent (4%) over the rates charged during the prior twelve (12) month period. Such increases in rates, if any, shall not result in increases of the amount of total compensation payable under this Agreement set forth in Section 5.1. In the event of any such rate increase, Exhibit D shall be revised, replaced and renumbered as Exhibit "D-1," Exhibit "D-2," etc., as applicable.

## 6. Termination

6.1 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 ACTA's CEO 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.

6.2 Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. ACTA's CEO, in his sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly.

6.3 If Board so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to ACTA in an organized, usable form with all items properly labeled to the degree of detail specified by ACTA's CEO. No compensation shall be due Consultant until it complies with the requirements of this paragraph.

6.4 Pursuant to Section 5 of ACTA's Amended and Restated Joint Exercise of Powers Agreement, ACTA shall be restricted in its powers in the same manner as the City of Los Angeles is restricted in its exercise of similar powers. Therefore, this Agreement is subject to the provisions of the Los Angeles City Charter Section 320 which precludes ACTA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

ACTA, its board, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the

Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

## 7. Recordkeeping and Audit Rights

7.1 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. Consultant's books and records shall be readily accessible to and open for inspection and copying at the 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.

7.2 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 Section 7.2 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.

## 8. Consultant Is An Independent Contractor

Consultant, in the performance of the Scope of Work, 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.

## 9. Indemnification

9.1 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, arbitration proceedings, administrative proceedings, 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.

9.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including without limitation, Section 2782.8 of the California Civil Code), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said Section 2782.8, Consultant shall indemnify, protect, defend and hold harmless ACTA, its Board and any of its officers, agents, 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 Board, officers, agents, employees, assigns, or successors in interest that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, or the acts or omissions of an officer, employee, agent or Subconsultant, excepting only liability resulting from the negligence or willful misconduct of ACTA.

## 10. Insurance

### 10.1 Insurance procured by Consultant on Behalf of Consultant

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and as a condition precedent to the effectiveness of this Agreement, 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:

#### (a) 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 Five Million Dollars (\$5,000,000) 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 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, a severability of interest clause and have the railroad exclusion deleted. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(b) Automobile Liability Insurance

Automobile liability insurance 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) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage 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.

(c) 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. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. 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.

(d) Pollution Liability Insurance

Consultant shall procure and maintain throughout the term of this Agreement, at its cost, Pollution Liability 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 Rating is not available), with Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or death or property damage arising out of each accident or occurrence covering Consultant's services under this Agreement. 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 judgment, such retention or self-insurance is justified by the net worth of Consultant. Consultant's pollution liability shall include coverage for losses caused by pollution conditions that arise from the operation of Consultant described under the scope of services of this Agreement and include: (a) on-site and off-site coverage for bodily injury, sickness, disease, mental anguish or shock sustained by a person, including death; (b) on-site and off-site property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; (c) on-site and off-site defense including costs, charges and expenses incurred in the investigation adjustment or defense of claims for such compensatory damages.

Non-owned disposal site coverage shall also be provided if Consultant is handling, storing or generating hazardous materials or any material/substance otherwise regulated under governmental laws/regulations.

The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute with it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and severability of interest clause, have no exclusions for Contractual Liability, have no restrictions for Sole Liability of Consultant, and shall not contain any other exclusions contrary to this Agreement.

Each policy shall name ACTA, its Board, officers, agents and employees as Primary and Non-Contributory additional insureds.

#### 10.2 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 Section 9, 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 Section 10. 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 the Alameda Corridor Transportation Authority, 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. C0903, 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 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, 411 West Ocean Boulevard, 9<sup>th</sup> Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

### 10.3 Required Features of Coverages

Insurance procured by Consultant in connection with this Section 10 shall include the following features:

#### (a) 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.

#### (b) 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.

#### (c) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to ACTA as set forth herein.

#### (d) 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.

#### (e) 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 the 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 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.

#### 10.4 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.

#### 11. Personal Services Agreement

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 Section 2.3. 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.

#### 12. Confidentiality

Consultant shall not disclose any proprietary or confidential information of ACTA to any third party or parties during or after the term of this Agreement without the prior written consent of ACTA. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work 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.

#### 13. Affirmative Action

Consultant 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.



14. Small/Very Small Business Enterprise Program

It is the policy of ACTA to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE), 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 this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, 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, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit G.

15. 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.

16. Compliance with Applicable Laws

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, and local laws, ordinances, rules, regulations, and orders.

17. Trademarks, Copyrights and Patents

Consultant shall promptly and fully inform ACTA's CEO in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant 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 Consultant in the performance of this Agreement.

18. Proprietary Information

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 section 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 the 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.

19. Royalty-Free License

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.

20. ACTA's Disclosure Obligations

Consultant acknowledges that ACTA is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

21. 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, registered or certified mail, return receipt requested, and postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective

parties, notice to 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 the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

22. 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.

23. Titles and Captions

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section 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.

24. Modification in Writing

This Agreement shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this Agreement. Any such modifications are subject to all applicable approval processes required by, without limitation, ACTA's Amended and Restated Joint Exercise of Powers Agreement.

25. 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.

26. 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.

27. 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.

28. Integrated Agreement

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.**

29. Exhibits; Sections

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 sections are to sections of this Agreement unless stated otherwise.

30. Counterparts and Electronic Signatures

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 executed this Agreement on the date next to their signatures.

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael C. Leue, P.E.  
Chief Executive Officer

Attest: \_\_\_\_\_  
Secretary

SCREAMIN EAGLE SERVICES INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_, 2023  
DAWN MCINTOSH, Long Beach City Attorney

By \_\_\_\_\_  
Thomas Y. Oh, Deputy  
ACTA Co-General Counsel

# EXHIBIT A

## Scope of Work

The Alameda Corridor Transportation Authority (“ACTA”) has occasional need for the removal of trash and debris along the Alameda Corridor twenty-mile right-of-way, including locations where ACTA maintains property adjacent to the tracks or at surface level above the trench (see Attachment 1).

ACTA requires the services of Consultant to collect and remove a variety of trash, debris and large items and legally haul and dispose of these at a qualified waste disposal location, in accordance with all local, state and federal regulations. The types of trash that may require removal include, but are not limited to:

- Household Trash;
- Furniture;
- Appliances;
- Building Materials;
- Automobile Parts

Consultant must be able to respond to ACTA’s request for trash removal within an agreed upon time frame. Trash removal is expected to typically occur on weekdays, but there may be need for weekend work under special circumstances.

### I. General

Consultant shall support and perform all phases of on-site trash removal on or adjacent to railroad tracks and Alameda Corridor Property, on an as needed basis.

#### A. Emergency Response

Emergency Response is the ability to respond to a request to remove trash on an emergency basis at any time, 24 hours per day, 7 days per week (including holidays), and provide containment and cleanup as required by local, state and federal regulatory agencies, and as directed by ACTA. Consultant shall have the ability to arrive on-scene within 30 to 45 minutes of notification.

#### B. Unidentified Waste

Unidentified wastes are unlabeled containers with unknown substances deposited on Alameda Corridor property that require removal.

1. Consultant shall have the ability to identify, package, and

transport the unidentified wastes deposited on Alameda Corridor properties (including on railroad tracks) or right-of-way for recycling, treatment, or disposal.

2. Response to these work requests will usually be required during normal working hours.

### C. Waste Management

Waste Management is the ability to identify, categorize, remove, package and recycle, or dispose of hazardous, non-hazardous, and regulated waste that are generated through the normal work process of maintaining property or equipment operated and maintained by ACTA.

1. Response to these removal requests will usually be required during normal working hours.
2. Consultant shall be required to be on-site at a facility operated and maintained by ACTA at a mutually agreed-upon time with an authorized ACTA representative.
3. Waste management services may include, but are not limited to:
  - a. Collecting and removal of debris;
  - b. Consolidating and packaging of hazardous materials;
  - c. Isolating and packaging unidentified materials;
  - d. Characterizing and profiling of waste prior to disposal; and
  - e. Transporting waste for disposal.
4. Regulated and/or hazardous materials include, but are not limited to:
  - a. Asbestos, crude oil and petroleum products, including fuel oil, mineral oil, gasoline, diesel;
  - b. Corrosive liquids, including acid, and alkaline solutions;
  - c. Polychlorinated Biphenyls (PCBs) and PCB-contaminated materials;
  - d. Mercury, lead, and other metals;
  - e. Waste tires;
  - f. Treated wood;
  - g. Bio-hazard waste;
  - h. Sewage; and
  - i. Other environmental regulated media.

### D. Miscellaneous Services

In addition to emergency and non-emergency activities listed above, ACTA may require Consultant to coordinate with local law agencies, railroad police, Los Angeles County Homeless



Services Agency (LAHSA) and their teams in the collection and possible retention of materials related to Persons Experiencing Homelessness (PEH) while removing trash.

#### E. Required Equipment

Consultant shall have, or have immediate access to, the equipment necessary to perform emergency and non-emergency activities listed above in a professional and efficient manner.

## II. Professional Requirements

Consultant shall perform all tasks in accordance with all applicable local, state, and federal regulations. Consultant shall also perform services in compliance with ACTA policies and programs.

#### A. Disposal and Transportation

1. Consultant shall haul materials to a fully permitted waste disposal facility or facilities capable of handling non-hazardous and hazardous wastes, including California regulated wastes, Resource Conservation and Recovery Act (RCRA) Federal regulated wastes, and liquid/solid waste under the Toxic Substances Control Act.
2. All subcontractors and all identified hazardous or regulated waste recycling and disposal sites must be reviewed and approved for environmental acceptability and regulatory compliance with applicable state and federal laws, at the sole discretion of ACTA. All recycling, treatment, storage, and/or disposal facilities must operate under Federal and State licenses/permits.
3. The Firm shall ensure that all wastes handled, stored or transported are properly contained and labeled for shipment in accordance with all applicable State and Federal regulations.
4. Consultant shall provide transportation of hazardous waste to a treatment, storage or disposal facility by a licensed and permitted hazardous waste transporter.
5. Consultant shall furnish all labor, materials, and equipment as well as technical expertise, supervision, and management to effectively identify, package, clean up, and transport the various regulated, non-hazardous and hazardous waste for recycling, treatment, and/or disposal.

#### B. Manifest Documents

1. Consultant shall provide 3 properly prepared non-hazardous and hazardous waste manifest documents for waste to be transported to disposal or treatment facilities.
2. On non-emergency or routine jobs, Consultant shall coordinate

with an ACTA representative and hazardous waste disposal or treatment facilities to provide hazardous waste profiles and manifests to ACTA.

III. Project Management

Consultant shall work directly under the supervision of ACTA.

IV. Project Deliverables

Consultant shall submit a summary report describing all work assignments, including a running total of costs at the completion of each contract task order event. The report must be cumulative. ACTA will provide the format for the report, which will include at minimum: type and quantity of material, removal date/technique, disposal date and tipping receipt.

**Exhibit "B"**

**Contract Task Order**

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Contract Task Order No. \_\_\_\_

Project Name

Pursuant to Section 2 of Agreement No. \_\_\_\_\_, after receipt of a written Notice to Proceed signed by ACTA's CEO, Consultant shall proceed with the following:

| <u>Task Services</u> | <u>Authorized Amount</u> |
|----------------------|--------------------------|
|----------------------|--------------------------|

Consultant shall provide all required task, services, and deliverables in accordance with Exhibit A to Agreement No. \_\_\_\_\_.

Consultant shall complete the work within \_\_\_\_ calendar days from ACTA's transmittal of its written Notice to Proceed.

Consultant shall undertake the following MBE/WBE/SBE/VSBE/DVBE/OBE utilization in connection with its performance of this Contract Task Order No. \_\_\_\_:

Consultant acknowledges that the terms and conditions of Agreement No. \_\_\_\_\_ govern this Contract Task Order and that its signature below reflects its agreement with the terms and conditions of this Contract Task Order No. \_\_\_\_.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

ACCEPTED:

\_\_\_\_\_  
(Consultant Name)

Date:

SAMPLE

## Exhibit "C"

### Form of Notice to Proceed

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Notice to Proceed – Contract Task Order No. \_\_\_\_  
Project Name

This is to notify and direct you to commence performance of the subject Contract Task Order No. \_\_\_\_\_. Enclosed is your set of the executed Contract Task Order documents.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

Enclosure: Contract Task No. \_\_\_\_

# EXHIBIT D

## SCREAMIN EAGLES SERVICES RATE SHEET

| ITEM               | UNIT OF MEASURE | QTY | RATE    | QTY | TOTAL    |
|--------------------|-----------------|-----|---------|-----|----------|
| PROJECT MANAGER    | HOUR            | 1   | \$100   | 8   | \$800    |
| SUPERVISOR         | HOUR            | 2   | \$100   | 8   | \$1,600  |
| LABOR              | HOUR            | 10  | \$17    | 8   | \$1,360  |
| WATER TRUCK        | DAY             | 1   | \$300   | 1   | \$300    |
| DUMP BIN           | HOUR            | 1   | \$100   | 8   | \$800    |
| ROLL OFF TRUCK     | DAY             | 1   | \$608   | 1   | \$608    |
| EQUIPMENT FUEL     | GALLON          | 1   | \$6     | 15  | \$90     |
| BOB CAT            | DAY             | 1   | \$400   | 1   | \$400    |
| EQUIPMENT FUEL     | GALLON          | 1   | \$5     | 12  | \$60     |
| TRASH DISPOSAL FEE | TON             | 1   | \$99.99 | 10  | \$999.99 |
| TRASH BAGS         | CASE            | 1   | \$50    | 1   | \$50     |
| PPE                | EACH            | 1   | \$35    | 12  | \$420    |
|                    |                 |     |         |     |          |
|                    |                 |     |         |     |          |
|                    |                 |     |         |     |          |
|                    |                 |     |         |     |          |
|                    |                 |     |         |     |          |

\*\*\*EMERGENCY CALL OUTS WILL RESULT IN AN ADDITIONAL 15% FEE

## EXHIBIT E

## Company Letterhead

Agreement No.:  
TIN:

Invoice Number:  
Date:  
ACTA PM:

Task number, Project Title  
Billing Period: Month/Day/Year to Month/Day/Year

| Authorized PD Budget | Current Invoice | Invoiced To-Date | PD Balance |
|----------------------|-----------------|------------------|------------|
| \$0.00               | \$0.00          | \$0.00           | \$0.00     |

| <b>PERSONNEL:</b>        | <b>Rate/Hour</b> | <b>Current Hours</b> | <b>Cumulative Hours</b> | <b>Current Total</b> |
|--------------------------|------------------|----------------------|-------------------------|----------------------|
| Name & Title             | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| "                        | \$0.00           | 0                    | 0                       | \$0.00               |
| <b>Total Labor Cost:</b> |                  |                      |                         | <b>\$0.00</b>        |

| <b>SUBCONSULTANT:</b>            | <b>Activity</b> | <b>Current Total</b> |
|----------------------------------|-----------------|----------------------|
| Name of Subconsultant            | Work Performed  | \$0.00               |
| "                                |                 | \$0.00               |
| "                                |                 | \$0.00               |
| "                                |                 | \$0.00               |
| <b>Total Subconsultant Cost:</b> |                 | <b>\$0.00</b>        |

| REIMBURSABLE EXPENSES:                                   | Current<br>Total |
|--|------------------|
| Mileage, Parking, Car Rentals, Reproduction/Copies, etc. | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
|  | \$0.00           |
| Total Other Direct Cost:                                 | \$0.00           |

## REMIT PAYMENT TO:

Company Name

Address

City, ST Zip

**TOTAL AMOUNT NOW DUE: \$0.00**

Progress Report: Describe the work undertaken during this billing period. Identify accomplishments and challenges encountered. Provide other info as appropriate.

I certify under penalty of perjury that the above bill is just and correct according to the terms of Agmt #\_\_\_\_\_ and that payment has not been received.

\_\_\_\_\_  
Consultant Representative Name

Date:

\_\_\_\_\_  
APPROVED AS TO SCOPE AND  
AMOUNT OF WORK PERFORMED

\_\_\_\_\_  
ACTA PROJECT MANAGER

**Exhibit F**

**ALAMEDA CORRIDOR  
MONTHLY SUBCONTRACTOR MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of \_\_\_\_\_ for the referenced contract number.

Contract No. \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Committed SBE Participation Percentage \_\_\_\_\_

|    |                       |                |   | PROPOSED                               | ACTUALS                   |                        |  |
|----|-----------------------|----------------|---|--|---------------------------|------------------------|--|
|    | Name of Subcontractor | Work Performed | Certifications:*<br>SBE/VSBE/MBE/WBE/OBE/DVBE | Original<br>Proposed SBE<br>Percentage | Amount Paid<br>This Month | Amount Paid<br>to Date | Overall Contract<br>Amount<br>Percentage<br>(Paid to Date) |
| 1  |                       |                |   |  |                           |                        |  |
| 2  |                       |                |   |  |                           |                        |  |
| 3  |                       |                |   |  |                           |                        |  |
| 4  |                       |                |   |  |                           |                        |  |
| 5  |                       |                |   |  |                           |                        |  |
| 6  |                       |                |   |  |                           |                        |  |
| 7  |                       |                |   |  |                           |                        |  |
| 8  |                       |                |   |  |                           |                        |  |
| 9  |                       |                |   |  |                           |                        |  |
| 10 |                       |                |   |  |                           |                        |  |

\* Indicate all certifications held by each subcontractor



## EXHIBIT G

### **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 Agreement, it has been determined that the percentage of required small business participation will be 0%.**

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

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES )

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_

(1) \_\_\_\_\_  
Name of Signer (1)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and)

(2) \_\_\_\_\_  
Name of Signer (2)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature \_\_\_\_\_

Place Notary Seal and/or Stamp Above

## 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: \_\_\_\_\_

# M E M O

## *Alameda Corridor Transportation Authority*

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|               |  |
|---------------|--|
| To:           | Governing Board  |
| Meeting Date: | February 2, 2023   |
| From:         | Michael C. Leue, Chief Executive Officer   |
| Subject:      | APPROVE First Amendment to Agreement M0899 with Union Pacific Railroad for Reimbursement of ACTA Costs for Construction Related Activities on Dolores Yard Crossover Project |

---

**Recommendation:**

Authorize the Chief Executive Officer or his designee to execute the First Amendment to Reimbursement Agreement with the Union Pacific Railroad Co. (UPRR), wherein ACTA agrees to perform certain reimbursable services for UPRR's Dolores Yard Crossover Project in accordance with the project Memorandum of Agreement.

The First Amendment increases the costs associated with construction on ACTA right-of-way, design review and administration by \$592,000 to a total amount of \$1,657,000 to be reimbursed by UPRR as costs are expended by ACTA and its contractors.

**Discussion:**

ACTA Governing Board approved execution of Agreement M0899 on June 16, 2022. Since that time, UPRR has made modifications to project components related to the railroad signal system. The construction costs related to the modifications increase by \$494,000 and design costs increase by \$98,000. The total increase is \$592,000 and the total amended agreement amount is \$1,657,000.

**Budget Impact:**

There is no impact to the FY23 Program Budget for the work, which is fully reimbursable.

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed and approved the proposed amendment as to form.

**Transmittals:**

Transmittal 1 – First Amendment to Agreement No. M0899 between the Alameda Corridor Transportation Authority and Union Pacific Railroad Company

FIRST AMENDMENT  
TO AGREEMENT NO. M0899  
BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND  
UNION PACIFIC RAILROAD COMPANY

THIS FIRST AMENDMENT to Agreement No. M0899 is made and entered into by the Alameda Corridor Transportation Authority ("ACTA"), acting by and through its Governing Board, and Union Pacific Railroad Company ("Union Pacific") as follows:

1. Section II, Union Pacific Reimbursement of ACTA Costs, Paragraph 2 is hereby removed and replaced in its entirety, as follows:

“2. The total estimated budget for ACTA’s Work as set forth in Exhibit B-1 is One Million Six Hundred Fifty-Seven Thousand Dollars (\$1,657,000.00). Any increase in the estimated budget for ACTA’s Work shall be evidenced by a revised exhibit in the manner set forth in Paragraph 3 of this Section.”

2. Exhibit B, “Scope of Work and Budget for Construction Related Activities for ACTA’s Work” is hereby removed and replaced in its entirety with Exhibit B-1, “Amendment 1 to Scope of Work and Budget for Construction Related Activities for ACTA’s Work”

Except as amended herein, all remaining terms and conditions of Agreement No. M0899 shall remain in full force and effect.

The effective date of this amendment shall be the date of its execution by ACTA’s Chief Executive Officer or his designee.

/////

/////

/////

IN WITNESS THEREOF, the parties hereto have executed this First Amendment to Agreement No. M0899 on the date to the left of their signatures:

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael D. Leue, P.E.  
Chief Executive Officer

Attest: \_\_\_\_\_  
Secretary

UNION PACIFIC RAILROAD  
COMPANY

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_, 2023  
HYDEE FELDSTEIN SOTO, Los Angeles City Attorney

By \_\_\_\_\_  
Heather M. McCloskey, Deputy  
ACTA Co-General Counsel

# EXHIBIT B-1

## Alameda Corridor Transportation Authority

### Amendment 1 to Scope of Work and Budget for Construction Related Activities for ACTA's Work

1/6/2023

#### PROJECT: Dolores Yard Crossover Project

|  |    |           |
|--|----|-----------|
| <b>ACTA Engineering</b>                                |    |           |
| Pre-construction Design Review                         | \$ | 20,000.00 |
| Construction Closeout Approval                         | \$ | 25,000.00 |
| Administration (contract management, accounts payable) | \$ | 15,000.00 |

|   |    |                  |
|---|----|------------------|
| <b>Railworks Labor, Materials and Equipment</b>   |    |                  |
| Flagging & Construction   | \$ | 196,498.84       |
| Weld Kits   | \$ | 4,125.00         |
| Rental Equipment  | \$ | 29,900.00        |
| Equipment Operator to Assist Highball Signal with Relocation & Installation of Signal Bungalow <sup>1</sup> | \$ | <b>12,753.40</b> |

|  |    |                   |
|--|----|-------------------|
| <b>Railworks Subcontractors</b>                                    |    |                   |
| Hutcher (Concrete Panel Hoisting Services)                         | \$ | 105,000.00        |
| Surfacing Crew for Turnout Installation (1 day Travel 2 days Tamp) | \$ | 26,276.25         |
| Highball Signal, Inc. <sup>1</sup>                                 | \$ | <b>940,787.82</b> |
| Fencing & Traffic Control (allowance for services as needed)       | \$ | 50,000.00         |

|  |    |                   |
|--|----|-------------------|
| <b>Pacific Railway Enterprises, Inc.</b>   |    |                   |
| Final Signal Design for the various Control Points and Software Development <sup>2</sup> | \$ | <b>231,628.58</b> |

|                                    |                        |  |
|------------------------------------|------------------------|--|
| <b>Construction Estimate Total</b> | <b>\$ 1,656,969.89</b> |  |
|------------------------------------|------------------------|--|


<sup>1</sup> Per Amendment 1 the costs increase, \$493,987.72, is due to increase cost to provide the labor and equipment necessary to replace two older outdated signal huts (CP Thenard "C" House and Watson Crossing House) with a one new larger signal bungalow with state of the art equipment.

<sup>2</sup> Per Amendment 1, the cost increase, \$98,407.90, is due to the need to re-design, test of new application software, field support and as-built preparation of the affected signals. The new design incorporates the new larger signal bungalow which will replace two existing bungalows (CP Thenard "C" House and Watson Crossing House) with all needed equipment for crossing and wayside as approved and based on recommendations from the UPRR's signal department.

# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board  
Meeting Date: February 2, 2023  
From: Kevin L. Scott, Chief Financial Officer   
Subject: INFORMATION on Fiscal Year 2023/2024 (FY 2024) Preliminary Budget Schedule

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### **Information:**

To ensure the timely preparation of the annual budget, ACTA staff has developed a preliminary budget schedule as follows. It includes the key budget preparation, review, and approval dates.

### **Discussion:**

- March 2, 2023 – Draft operating budget completed by ACTA staff.
- March 9, 2023 – Draft budget circulated in-house for review by ACTA management.
- March 16, 2023 – Draft budget emailed to Ports' staff for review/comment.
- March 23, 2023 – Draft budget included in Governing Board package.
- April 6, 2023 – Draft budget presented as information to the Governing Board at regularly scheduled Governing Board meeting.
- May 18, 2023 - Draft budget included in the Governing Board package.
- June 1, 2023 – Final FY 2024 Budget presented to Governing Board for adoption.

Should the April Governing Board meeting be cancelled, the draft budget will be presented at the May Governing Board meeting. Should the June Governing Board meeting be cancelled, a special meeting will be required prior to July 1, 2023, to adopt the budget.

### **Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed this Board Report and there are no legal issues at this time.






# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board  
Meeting Date: February 2, 2023  
From: Michael C. Leue, Chief Executive Officer   
Subject: INFORMATION on 2023 Alameda Corridor Emergency Drill

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**Discussion:**

ACTA and the railroads conduct an annual Emergency Field Exercise to enable local fire departments and other emergency responders located along the Corridor to provide training to their personnel. The single-day exercise involves the simulation of emergency conditions in order to develop personnel skills, joint field command posts with multiple jurisdictions, and working relationships between the emergency responders and the railroads. The exercise includes working with the HAZMAT teams, practicing medical evacuations, and training personnel in the use of the access ladders and emergency phones.

Participating agencies include Los Angeles County Fire, Los Angeles City Fire Department, Compton Fire Department, BNSF Railway and Union Pacific Railroad.

Due to COVID-19, the 2020, 2021 and 2022 Emergency Field Exercises were cancelled. This will be the first Emergency Field Exercise since 2019.

Coordination of this annual event is provided through an existing ACTA consultant contract with North American Emergency Management (NAEM) in conjunction with ACTA staff.

**Budget Impact:**

Costs for the emergency drills are included in the FY23 Operating Budget. There is no impact to the FY23 Operating Budget for the subject work.

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed this Board Report and there are no legal issues at this time.