

AGREEMENT NO. \_\_\_\_\_

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
CITY OF LONG BEACH

This AGREEMENT ("Agreement") is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a joint powers authority acting by and through its Governing Board ("ACTA"), and the CITY OF LONG BEACH, a municipal corporation acting by and through its Board of Harbor Commissioners ("POLB").

WHEREAS, POLB is undertaking the development and construction of its Pier B On-Dock Rail Support Facility ("Pier B Project" or "Project"); and

WHEREAS, the Project is partially located on property jointly owned by POLB and the City of Los Angeles Harbor Department ("POLA") which is part of the Rail Corridor used by ACTA pursuant to certain agreements between, *inter alia*, ACTA, POLA, and POLB known as the Use Permit and the Use and Operating Agreement ("UOA"); and

WHEREAS, certain portions of the Project will require ACTA to perform various pre-construction services including independent review of the environmental review document certified by POLB, project design review to obtain approval by the UOA parties for the Project on ACTA corridor property, flagging services and other environmental, real estate and legal review services for Project work located on the Alameda Corridor Right-of-Way ("ACTA Work"); and

WHEREAS, any construction-related services and closeout services performed by ACTA shall be addressed in a subsequent reimbursement agreement or through an amendment to this Agreement; and

WHEREAS, ACTA and POLB desire to execute this Agreement providing the terms and conditions pursuant to which ACTA will complete the ACTA Work and POLB will reimburse ACTA for the costs and expenses associated with such work;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**I. Work to be Completed by ACTA**

1. As set forth in Exhibit A and made a part of this Agreement, ACTA and its contractors shall complete ACTA's Work on the Project.
2. A Budget Estimate for ACTA's Work is also set forth in Exhibit A.

3. As set forth below ACTA shall perform ACTA's Work by its own forces and its contractors (which contractors may include legal and CEQA consultants, ACET, RailWorks Track Services, Inc., and Pacific Railway Enterprises, Inc.).

## **II. POLB Reimbursement of ACTA Costs**

1. As described in Exhibit A, POLB shall reimburse ACTA one hundred percent (100%) of the actual costs and expenses incurred by ACTA with respect to ACTA's Work, including a fifteen percent (15%) Administrative Overhead charge.

2. The total estimated budget for [this Agreement](#) is One Hundred Sixty-one Thousand Dollars (\$161,000) (["Total Budget"](#)), which is broken down as follows: (i) [ACTA's Work as set forth in Exhibit A is One Hundred Forty Thousand Dollars \(\\$140,000\)](#), plus (ii) [Twenty-One Thousand Dollars \(\\$21,000\) for the Administrative Overhead charge referenced in Section II, Paragraph 1](#). Any increase in the estimated [Total Budget](#) shall be evidenced in the manner set forth in Paragraph 3 of this Section.

3. During the term of this Agreement, ACTA shall provide POLB with periodic updates (but no less than monthly) with respect to any anticipated or proposed changes to the [Total Budget](#) or schedule of ACTA's Work. Any revised cost estimates exceeding 10% of the then current [Total Budget](#) shall be agreed upon by ACTA's Chief Executive Officer and POLB's Executive Director and added as an exhibit to this Agreement, without further approval of their respective governing boards. Such exhibits shall be labeled as "Exhibit A-1" (and so on numerically), dated, and added to Exhibit A of this Agreement. Such revised exhibit(s) shall not otherwise require a written amendment to this Agreement, except however, a written amendment approved by their respective governing boards will be required if and when the [Total Budget](#) increase exceeds 25% of the original [Total Budget](#) set forth in Paragraph 2 of this Section (i.e., [Total Budget](#) increase exceeding \$40,250).

4. The maximum amount payable under this Agreement, unless modified by written amendment, shall be Two Hundred and One Thousand Two Hundred Fifty Dollars (\$201,250).

5. On a monthly basis, ACTA shall submit invoice(s) and supporting documentation of ACTA's Work completed in the prior month, or in the case of subcontractors their invoices received in the prior month, to POLB for reimbursement. The invoices and supporting documentation shall contain sufficient detail and clarity to indicate the portions of ACTA's Work that were completed during the invoicing period.

6. Within forty-five (45) days of receipt of any invoice from ACTA, POLB shall tender payment in full to ACTA.

7. ACTA shall submit a final reconciled invoice to POLB within 180 days after the completion of ACTA's Work. The final billing shall be in the form of an itemized statement of the total costs for ACTA's Work, less amounts covered by advance

payments. Within 45 days after receipt of the final reconciled invoice, POLB shall pay ACTA all amounts evidenced by such invoice in full.

**III. 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, POLB undertakes and agrees to defend, indemnify and hold harmless ACTA, its Board and any of its officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by ACTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including POLB's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner related to the Project and this Agreement, including third party claims against ACTA for its (or its subcontractors) performance of services under this Agreement. 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.

**IV. Effective Date and Term**

1. The effective date of this Agreement shall be the date of its execution by ACTA's CEO upon authorization of the ACTA Governing Board.

2. This Agreement shall be in full force and effect commencing from the date of ACTA's CEO execution and shall continue until One (1) year has lapsed from the effective date of this Agreement.

**IV. Miscellaneous Provisions**

1. Notices: Any Notice to be given by each Party to the other shall be in writing and delivered in person or by United States Mail, registered or certified, postage prepaid, return receipt requested, addressed to the Party for whom intended, as follows:

To ACTA:

Alameda Corridor Transportation Authority  
ATTN: Michael C. Leue, P.E. CEO  
3760 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806

To POLB:

City of Long Beach Harbor Department

ATTN: \_\_\_\_\_  
415 W. Ocean Blvd, 11th Floor  
Long Beach, CA 90802

2. Force Majeure: The performance of the obligations of the Parties under this Agreement except for the payment of monies owed, shall be excused while, and to the extent that, a Party is prevented from complying therewith, in whole or in part, by a strike, fire, war, civil disturbance, act of God; by federal, state or municipal law; by any rule, regulation or order of a governmental agency or judicial court, by inability to secure equipment and materials; or any other cause or causes beyond the reasonable control of that Party. Neither Parties shall be required, against their respective wills to adjust or settle any labor dispute in order to meet any obligation imposed hereunder.

3. Interpretation: Neither this Agreement nor any provision hereof shall be interpreted for or against any of the parties on the basis that said party or parties drafted the provision in question, nor on the basis of a previous draft or drafts of the provision in question.

4. Successors and Assigns: This Agreement and all of its terms, provisions, covenants and conditions, except as otherwise expressly provided in this Agreement, shall inure to the benefit of and be binding upon the personal representatives, successors and assignees of the Parties hereto.

5. Governing Law: 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.

6. Amendments and Modifications: Other than as set forth in Section II, Paragraph 3, the terms of this Agreement may be modified only by written amendment approved by the Parties, subject to all applicable approval processes required by either Party.

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

/////

/////

////

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

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

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

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

Attest: \_\_\_\_\_  
Maria Melendres  
Secretary

APPROVED AS TO FORM

\_\_\_\_\_, 2023  
MICHAEL N. FEUER, Los Angeles City Attorney

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

CITY OF LONG BEACH, a municipal  
corporation acting by and through its  
Board of Harbor Commissioners

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

By: \_\_\_\_\_  
Mario Cordero  
Executive Director

Attest: \_\_\_\_\_  
Shana Espinoza  
Executive Officer to the Board

APPROVED AS TO FORM

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

By \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_