

# **A G E N D A**

## ***SPECIAL MEETING***

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

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Meeting Date:	February 24, 2023
Time:	3:30 P.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). 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 Participant Pin: 2178101#
Written Public Comment about Agenda Items.	Email: <a href="mailto:PublicComment@acta.org">PublicComment@acta.org</a> 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 December 2022 Performance Report

**Regular Agenda:**

2. APPROVE Minutes of the February 2, 2023, Regular Governing Board Meeting of the Alameda Corridor Transportation Authority
3. APPROVE Confirmation of ACTA Investment Policy for Non-bond Funds
4. INFORMATION on 2023-2024 Renewal of ACTA Insurance Coverages
5. APPROVE Agreement with Jinji LLC for a not to exceed amount of \$36,000 and a three-year term to provide an On-Call Human Resources Hotline Service
6. APPROVE Assignment and Assumption of Agreement No. C0788 to Foster & Foster Consulting Actuaries, Inc. from Bartel Associates, LLC for the continuation of actuarial services
7. APPROVE First Amendment to Agreement C0889 with Pacific Railway Enterprises, Inc. to increase the total compensation amount by \$125,000 for an agreement total not to exceed amount of \$375,000 for the continuation of Signal Design Services
8. APPROVE Contract Task Order No. 7, Revision 1 to Agreement C0855 with RailWorks Track Services, LLC to increase the agreement compensation by \$494,000 for a total compensation amount of \$1,365,354 for construction services in connection with the Union Pacific Dolores Yard Crossover Project
9. APPROVE Reimbursement Agreement with the City of Long Beach Harbor Department for a not to exceed amount of \$201,250 and a one-year term for ACTA to provide various support services in connection with the Pier B On-Dock Rail Support Facility Project
10. APPROVE Agreement with Dudek for a not to exceed amount of \$50,000 and a one year term to provide CEQA Consulting Services for the Port of Long Beach Pier B On-Dock Rail Support Facility Environmental Impact Report

**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 December 2022**

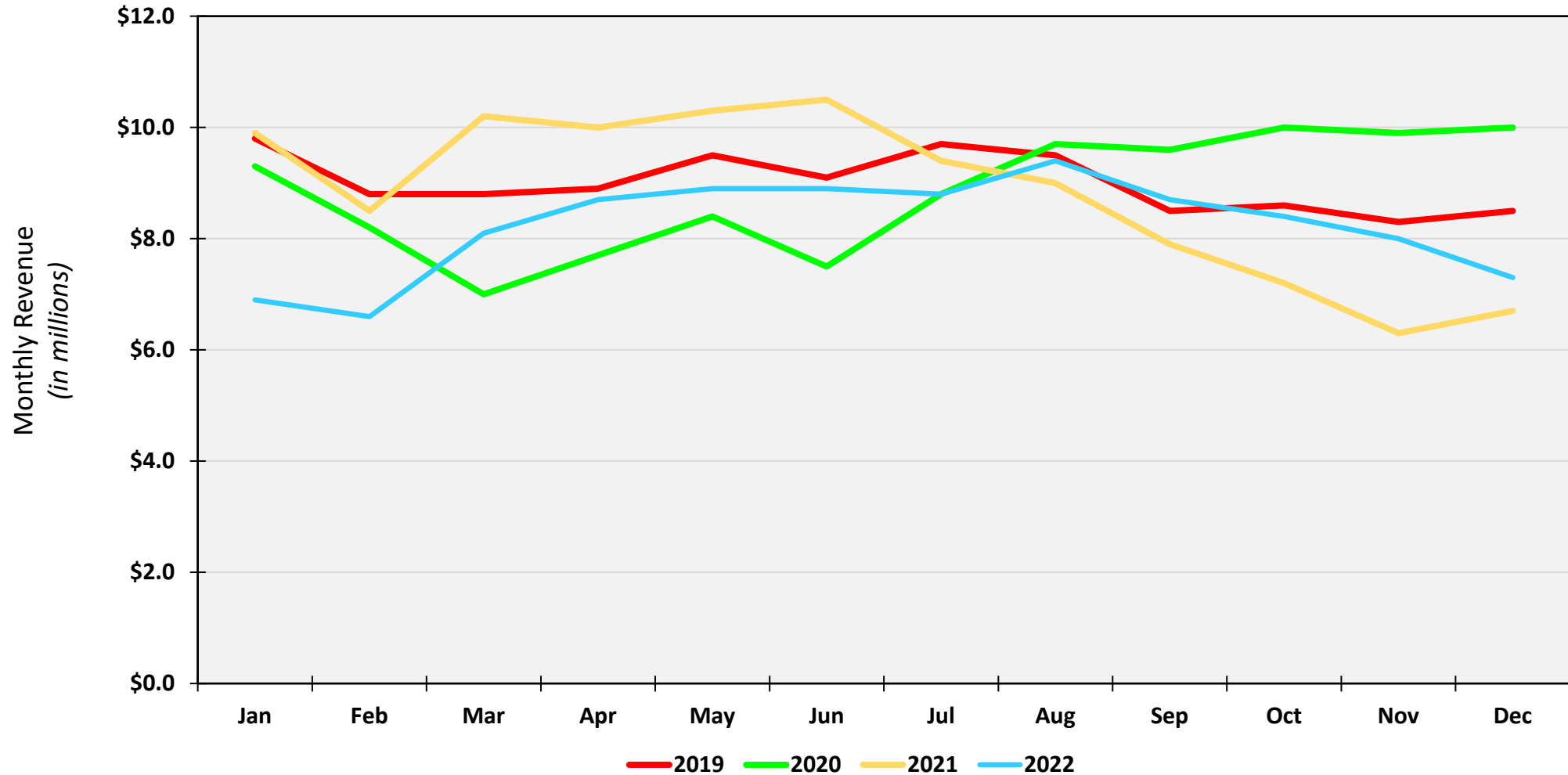
## Port Container Throughput (TEUs) – December 2022

	POLA		POLB		Combined	
	Dec-22	%Change*	Dec-22	%Change*	Dec-22	%Change*
<b>Imports</b>	352,046	- 8.6%	241,643	- 32.6%	593,689	- 20.2%
<b>Exports</b>	96,518	36.2%	115,782	1.6%	212,300	14.9%
<b>Total Loaded</b>	448,564	- 1.7%	357,425	- 24.4%	805,989	- 13.2%
<b>Empty</b>	280,307	- 15.2%	186,680	- 33.7%	466,987	- 23.7%
<b>Total</b>	728,871	- 7.3%	544,105	- 27.9%	1,272,976	- 17.4%
	YTD	%Change*	YTD	%Change*	YTD	%Change*
<b>Imports</b>	4,975,735	- 9.8%	4,358,790	- 4.9%	9,334,525	- 7.5%
<b>Exports</b>	1,187,085	0.2%	1,414,883	- 1.6%	2,601,968	- 0.8%
<b>Total Loaded</b>	6,162,820	- 8.0%	5,773,673	- 4.1%	11,936,493	- 6.1%
<b>Empty</b>	3,748,339	- 5.8%	3,359,986	- 0.1%	7,108,325	- 3.2%
<b>Total</b>	9,911,159	- 7.2%	9,133,659	- 2.7%	19,044,818	- 5.1%

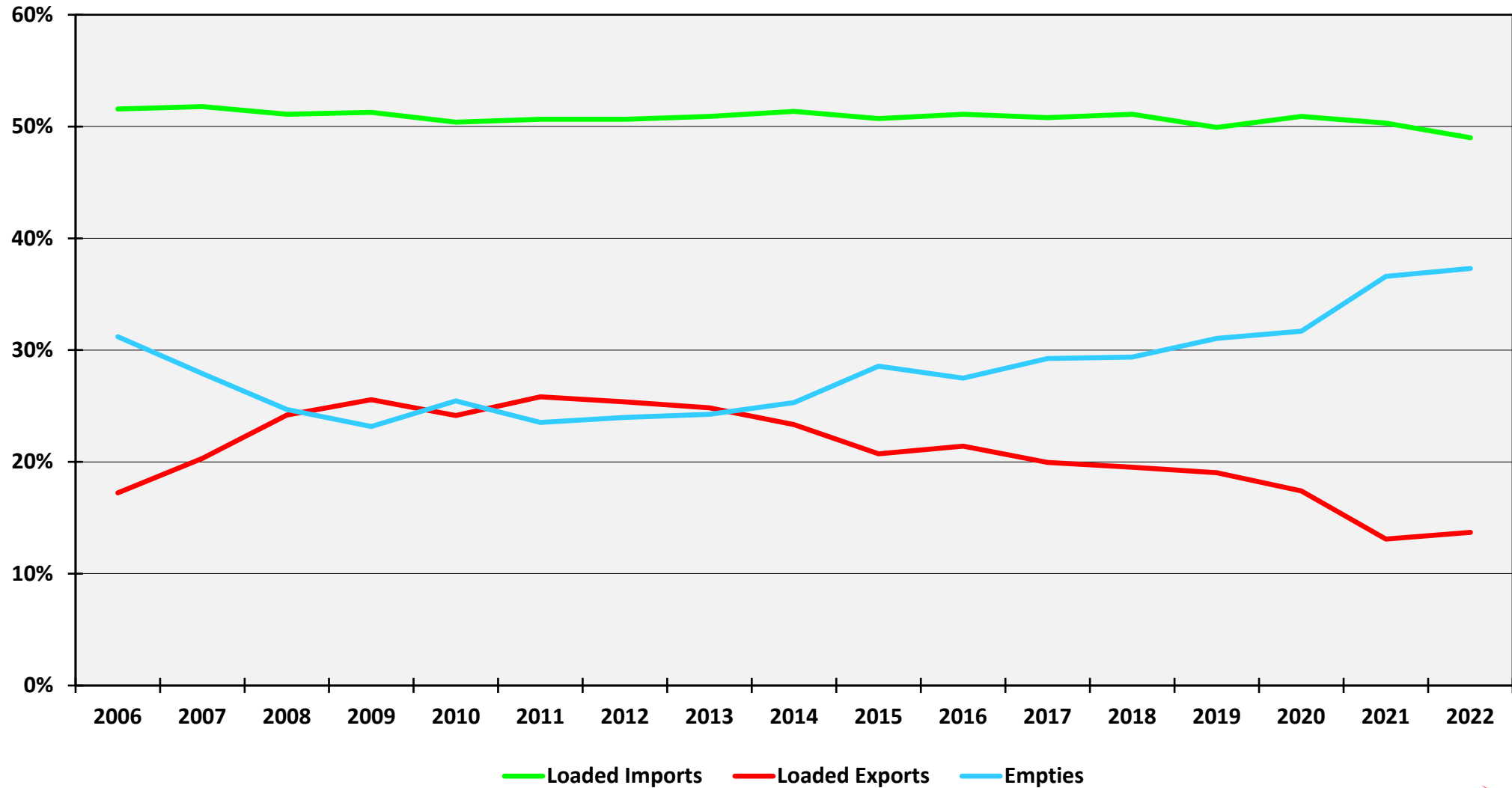
## Alameda Corridor Performance December 2022

	Dec 2022	CY22	FY23
<b>Revenue</b>	\$7.3 M	\$98.8 M	\$50.7 M
Change from 2021	9.7 %	- 6.8 %	8.9 %
<b>TEU's</b>	337,579	4,704,491	2,461,751
Change from 2021	4.5 %	- 8.5 %	6.0 %

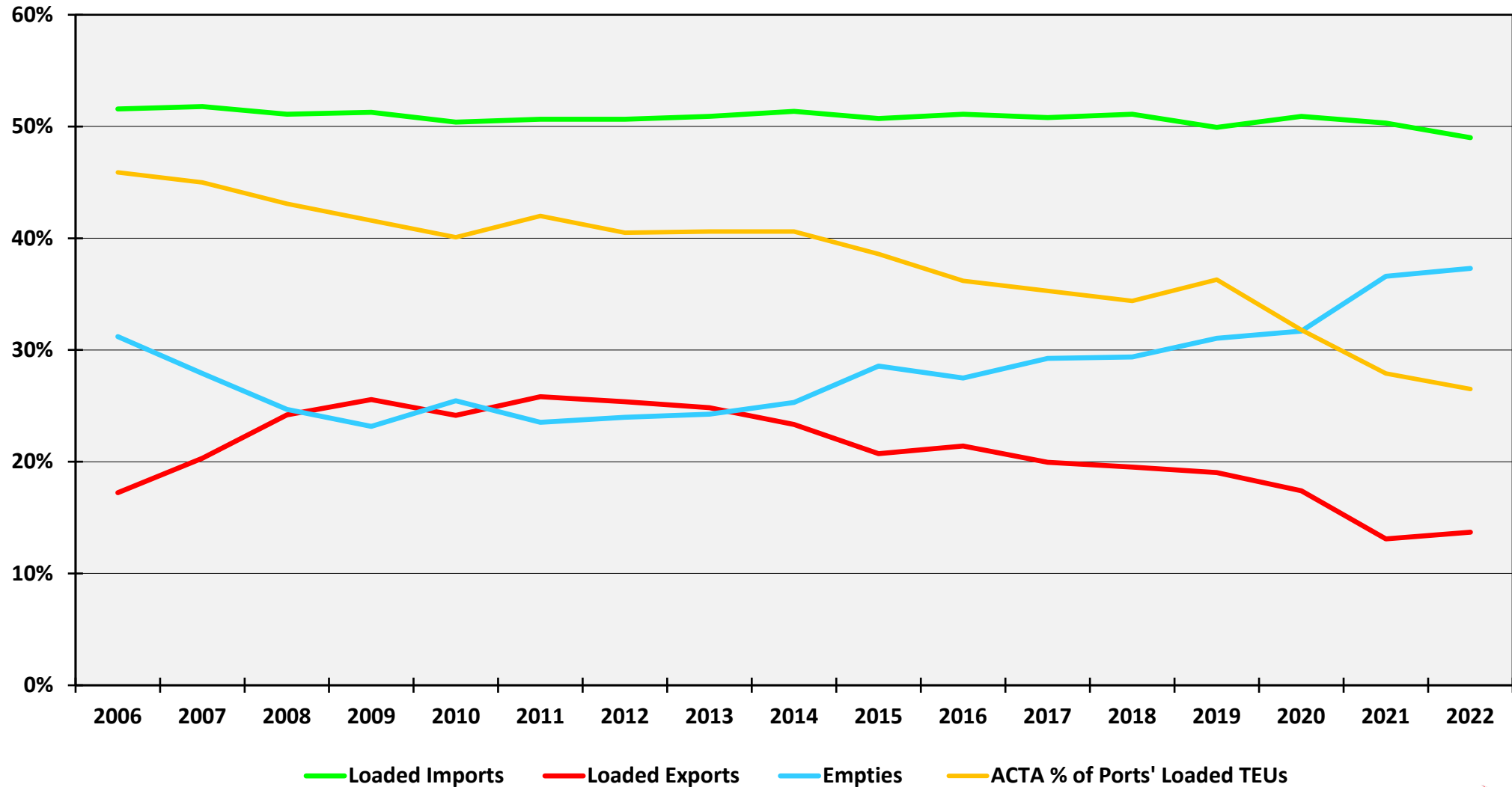
# Corridor Revenue Performance CY2019, CY2020, CY2021 & CY2022



# Port Cargo Components

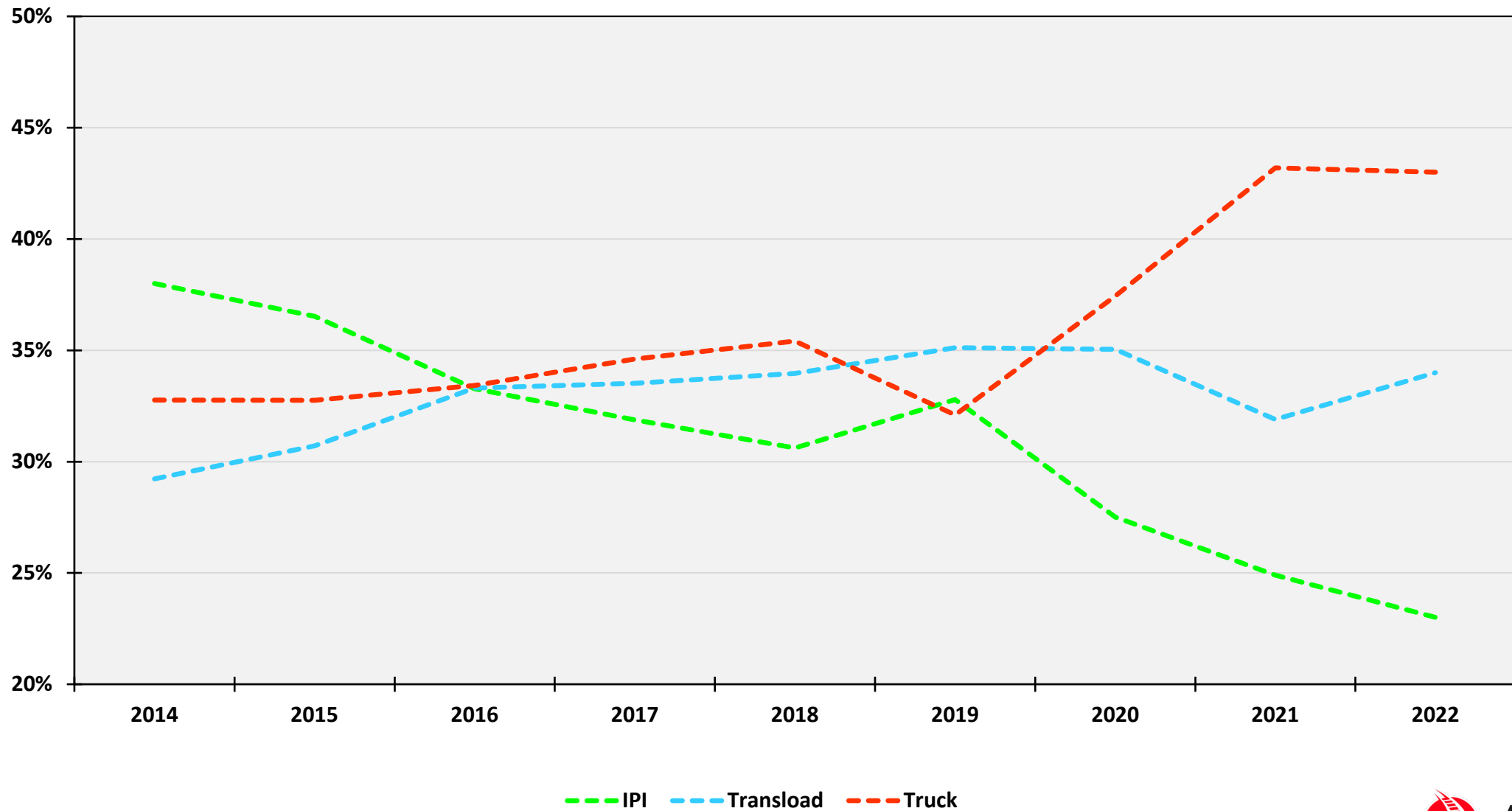


# Port Cargo Components

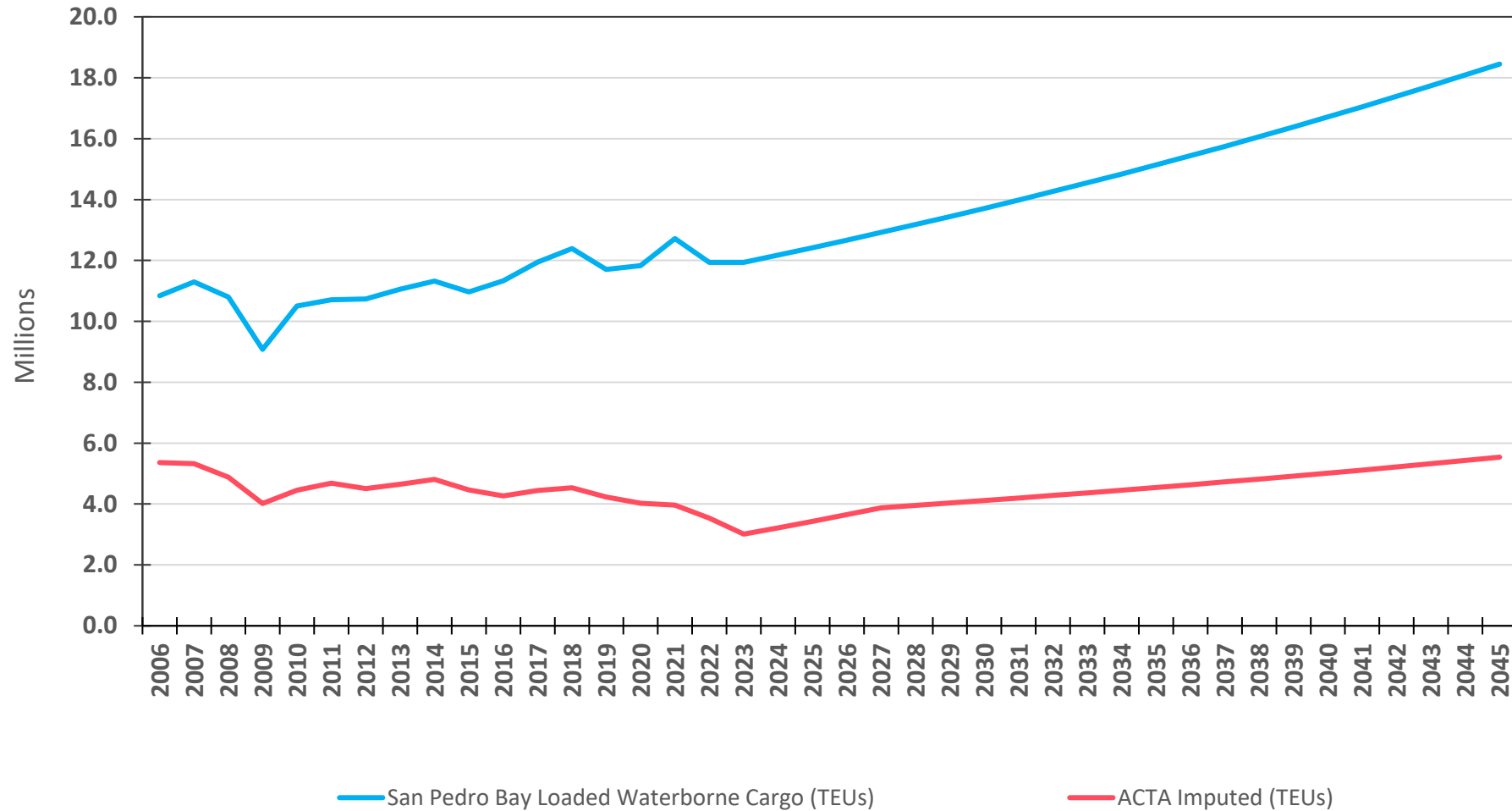




# Mode Split Ports Loaded Import Cargo

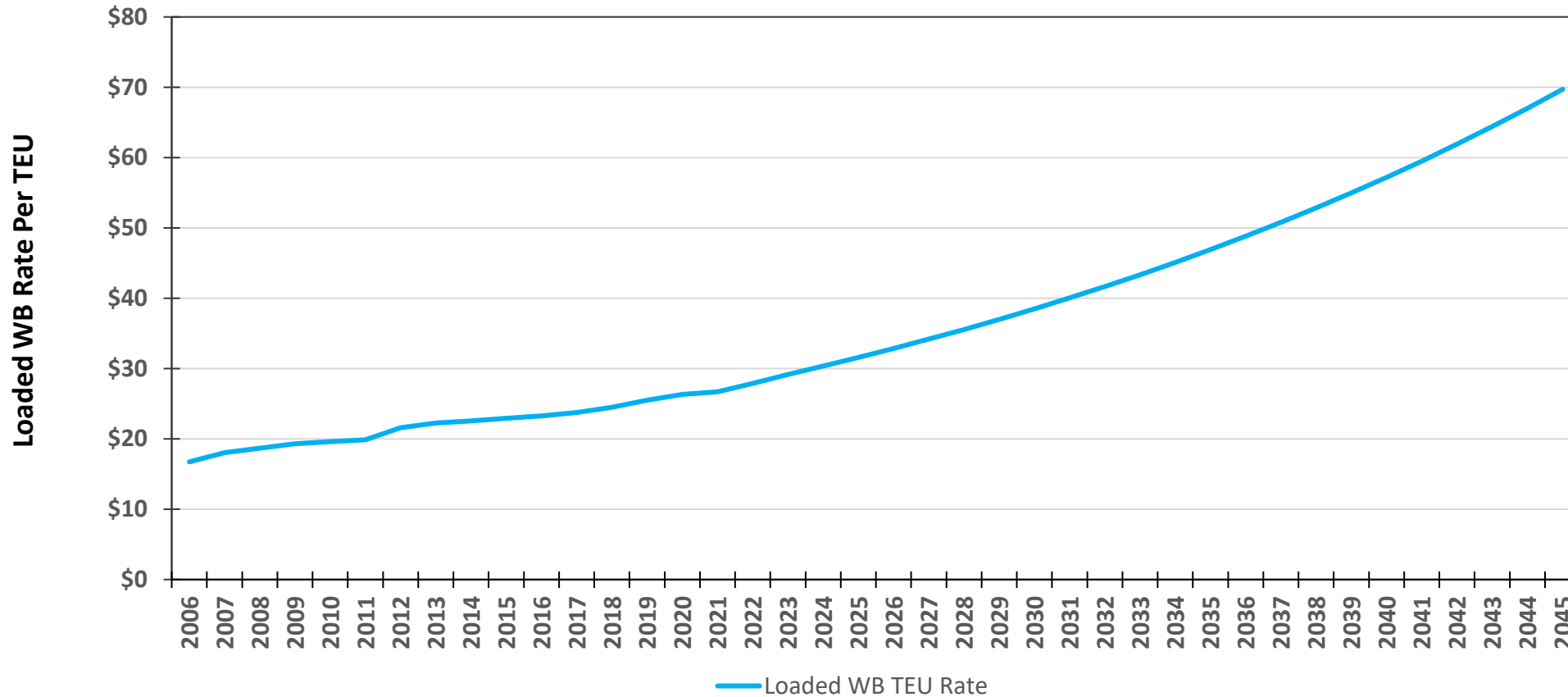


# Port & ACTA Cargo Volumes CY2006 to CY2045



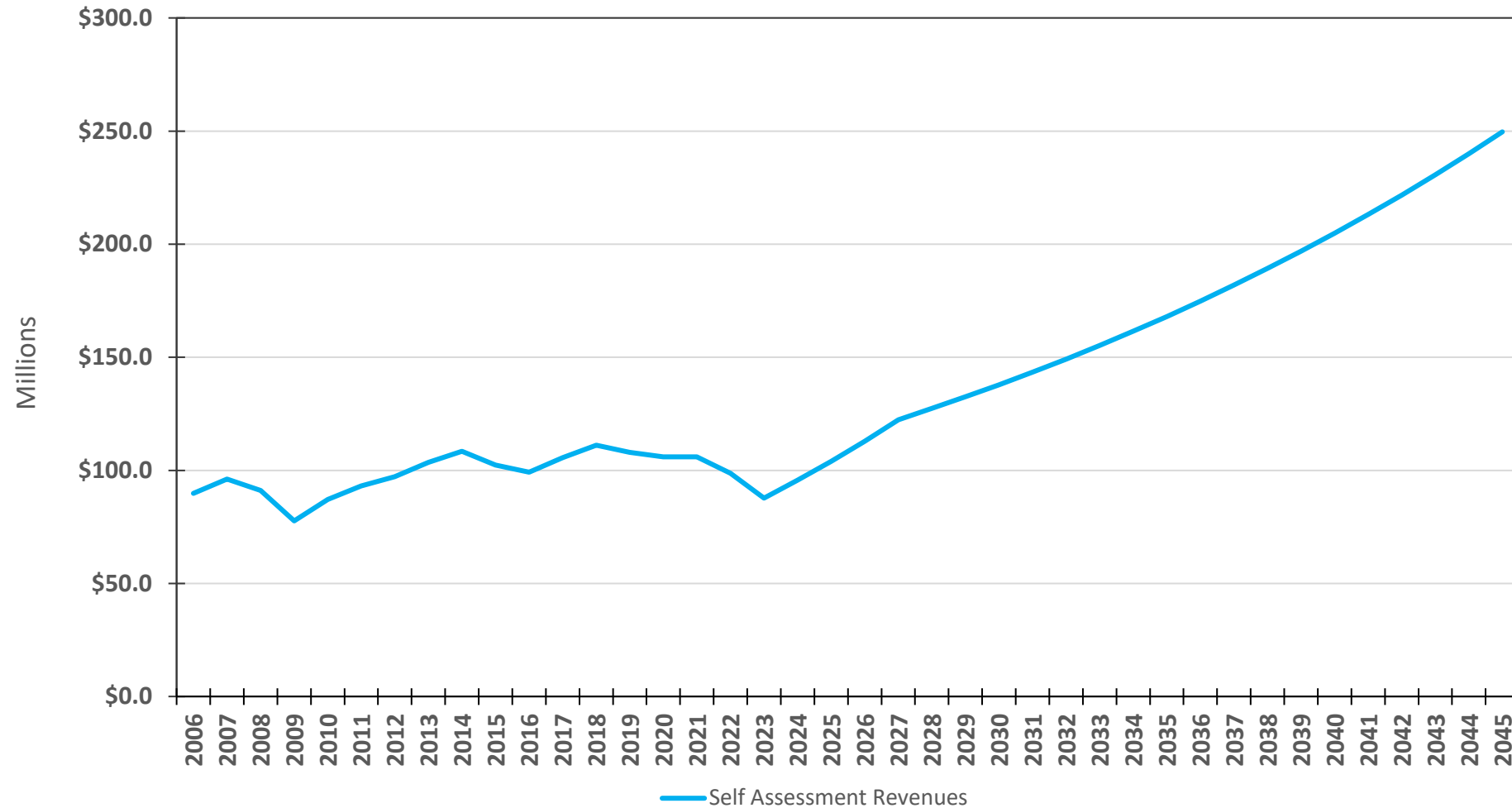
Note: CY 2023 through 2045 numbers estimated form Revenue Forecast Model

# ACTA Fee - Loaded Waterborne CY2006 to CY2045



Note: CY 2023 through 2045 numbers estimated from Revenue Forecast Model at a 2% increase

# ACTA Revenue CY2006 to CY2045



*Note: CY 2023 through 2045 numbers estimated form Revenue Forecast Model*

MINUTES OF A REGULAR MEETING OF THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY GOVERNING BOARD HELD ON FEBRUARY 2, 2023 AT 10:00 A.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  
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  
Bonnie Lowenthal, Port of Long Beach

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 10:03 a.m. The opening statement was read into the record.

**C. AGENDA ITEMS**

Item No. 9 was moved up in the agenda to accommodate Councilmember Buscaino's schedule.

**9. PRESENTATIONS TO LOS ANGELES CITY COUNCILPERSON JOE BUSCAINO – RECOGNITION OF COMPLETION OF SERVICE AS A BOARD MEMBER.**

Councilmember Buscaino was recognized by the members of the Board and ACTA staff for his ten years of service as chair and vice chair of the ACTA Governing Board. Councilmember Buscaino was presented with various items of recognition and words of appreciation.

## **Reports**

### **1. NOVEMBER 2022 CORRIDOR PERFORMANCE**

Michael Leue presented the Corridor performance statistics through November 2022.

## **Consent Agenda**

### **2. MINUTES - ACTA GOVERNING BOARD SPECIAL MEETING OF JANUARY 5, 2023 – APPROVED.**

Minutes of the Special Meeting of January 5, 2023, of the Governing Board of the Alameda Corridor Transportation Authority, were presented to the Governing Board.

### **3. MONTHLY FINANCIAL REPORTS AS OF NOVEMBER 2022 FINANCIAL REPORT – RECEIVED AND FILED.**

Communication from Kevin L. Scott, Chief Financial Officer, dated February 2, 2023, recommending that the monthly financial reports as of November 30, 2022, be received and filed, was presented to the Governing Board.

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

Communication from Michael C. Leue, Chief Executive Officer, dated February 2, 2023, recommending that the Board approve Resolution No. JPA 23-3 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 Lowenthal motioned, seconded by Board Member Cordero that Item Nos. 2 & 4 be approved as recommended and Item No. 3 be received and filed. Roll call was taken and carried by the following vote:

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

NOES: None

ABSENT: Zendejas

## **Regular Agenda**

### **5. NRC ENVIRONMENTAL SERVICES, INC., OCEAN BLUE ENVIRONMENTAL SERVICES, INC., SCREAMING EAGLE SERVICES, INC. – ON-CALL TRASH REMOVAL SERVICES –APPROVED.**

Communication from Michael C. Leue, Chief Executive Officer, dated February 2, 2023, recommending the approval of the Chief Executive Officer or Chief Financial Officer to execute agreements for On-Call Trash Removal Services in an amount of \$50,000 per year and not to exceed \$150,000 for a three-year term with the following firms: NRC Environmental Services, Inc. – Agreement No. 901 for \$50,000;

Ocean Blue Environmental Services, Inc. – Agreement No. 902 for \$50,000; and Screaming Eagle Services, Inc. for \$50,000 – Agreement No. 903 for \$50,000, was presented to the Governing Board.

No public comment was received on Item No. 5.

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

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

NOES: None

ABSENT: Zendejas

**6. UNION PACIFIC RAILROAD – FIRST AMENDMENT – AGREEMENT M0899 – REIMBURSEMENT ON DOLORES YARD CROSSOVER PROJECT – APPROVED.**

Communication from Michael C. Leue, Chief Executive Officer, dated February 2, 2023, recommending the approval of 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 management Memorandum of Agreement, was presented to the Governing Board.

No public comment was received on Item No. 6.

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

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

NOES: None

ABSENT: Zendejas

**7. PRELIMINARY BUDGET SCHEDULE – FISCAL YEAR 2023/2024 – INFORMATION.**

Communication from Kevin L. Scott, Chief Financial Officer, dated February 2, 2023, with information on a preliminary budget schedule to include the key budget preparation, review, and approval dates, was presented to the Governing Board.

No public comment was received on Item No. 7.

**8. 2023 ALAMEDA CORRIDOR EMERGENCY DRILL – INFORMATION.**

Communication from Michael C. Leue, Chief Executive Officer, dated February 2, 2023, with information on the 2023 Alameda Corridor Emergency Drill, was presented to the Governing Board.

No public comment was received on Item No. 8.

**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 11:02 a.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 24, 2023  
From: Kevin C. Scott, Chief Financial Officer   
Subject: APPROVE Alameda Corridor Transportation Authority Investment Policy

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### **Recommendation:**

It is recommended that the Board approve the Alameda Corridor Transportation Authority Investment Policy for non-bond funds.

### **Discussion:**

ACTA's Investment Policy ("Investment Policy") provides the basis for investment of all of ACTA's funds, including approximately \$14 million invested in the Local Agency Investment Fund (LAIF) and SR-47 funds.

A separate but parallel investment policy, included in the Master Trust Indenture under Permitted Investments, provides authority for investment of more than \$101 million in bond related funds. The Investment Policy requires that the Governing Board review the policy annually and approve or amend the policy as may be recommended by staff.

Shortly after the end of each month, staff provides the Governing Board a report showing ACTA's investments in bond related funds and non-bond funds as invested by ACTA's Investment Manager, Chandler Asset Management (CAM).

On April 12, 2018, the Board approved revisions to the Investment Policy pertaining to non-bond funds. Certain investment options (in particular, Bills of Exchange and Repurchase Agreements) were identified as no longer available or appropriate to ACTA and therefore were removed from Section VIII - Authorized Investments. In a number of other instances throughout Section VIII - Authorized Investments, percentage of portfolio restrictions were added or expanded to limit amounts which may be invested in certain investment instruments, generally to small percentages of the portfolio and smaller percentages in the securities of a single entity to avoid concentration. The changes reduced the potential for exposure to loss by limiting the amount of money which can be invested in any type of instrument or with a single issuer. The limitations reduced investment flexibility. Since that time, there have been no significant events, internally or externally, and no relevant changes in the State Code to warrant any revisions to the current version of the Investment Policy. The current Investment Policy has been reviewed by CAM who concurs with staff's recommendation that no revisions are necessary for the next fiscal year.

As part of the required annual review and approval process, staff recommends that the Board approve the Investment Policy attached as Transmittal 1. The Investment Policy is based on the California Government Code Sections set forth in the Investment Policy. The investment policy for bond related funds included in the Permitted Investments definition of the Master Trust Indenture is unchanged, as any change would require an Amendment of the Master Trust Indenture.

**Budget Impact:**

There is no budget impact to the approved FY2023 ACTA Program Budget.

**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 – Alameda Corridor Transportation Authority Investment Policy

# ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY INVESTMENT POLICY

## I. INTRODUCTION

The purpose of this document is to set forth the policies and procedures for a prudent and systematic investment policy and to organize and formalize investment-related activities with respect to certain Alameda Corridor Transportation Authority (“ACTA”) funds. This version of the ACTA Investment Policy was approved by the ACTA Governing Board at a meeting held on Thursday, April 12, 2018.

The investment policies and practices of ACTA are based upon compliance with the California Government Code Sections 53600 and 53635 et seq., other state laws as applicable and prudent investment management as described herein. Should the provisions of the Government Code change from those contained herein, such provisions will be considered incorporated in this Policy. It is the policy of ACTA to comply with all federal, state and local laws governing the investment of certain monies under the control of ACTA. The monies under the control of ACTA (referred to as the “Funds” throughout the remainder of this document) will be invested, reinvested, administered, and reported according to this Policy.

ACTA’s Chief Financial Officer and its Treasurer shall act in accordance with this Policy and the Prudent Investor Rule in the management of ACTA’s Funds. When acting in accordance with this Policy, written portfolio guidelines and procedures, and exercising due diligence, ACTA’s Chief Financial Officer and its Treasurer shall be relieved of personal responsibility for individual security’s credit risk and/or market price changes, provided that deviations from expectations are reported in the monthly and quarterly investment reports to the ACTA Governing Board, and appropriate action is taken to control adverse developments.

Generally, investments shall be made in the context of the “Prudent Investor Rule” as described in California Government Code Section 53600.3, which states that,

*“ . . . all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.”*

This Policy shall remain in effect until the ACTA Governing Board approves a subsequent revision.

## II. SCOPE

It is intended that this Policy cover all Funds and investment activities of ACTA unless specifically excluded by the Governing Board of ACTA, such as bond funds covered by ACTA's Master Trust Indenture.

## III. INVESTMENT OBJECTIVES

### A. Safety of Principal

ACTA's foremost investment objective shall be safety of principal. Each investment transaction shall seek to ensure that capital losses are avoided, whether from securities default, broker-dealer default, or erosion of market value. The Treasurer and the Chief Financial Officer of ACTA shall seek to preserve principal by mitigating the two major types of risk: credit risk and market risk.

1. Credit Risk. Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing only with issuers whose financial strength and reputation can be verified to be highly rated by nationally recognized rating agencies (see Section VIII. Authorized Investments for detailed limitations on credit risk), and by diversifying the investment portfolio, consisting of ACTA's Local Agency Investment Fund and ACTA's SR-47 Fund (Investment Portfolio), so that the failure of any one issuer would not unduly harm ACTA's cash flow.
2. Market Risk. Market risk, defined as the risk of market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by (a) structuring the portfolio so that securities mature at or near the timing of ACTA's major anticipated cash outflows, thus reducing the need to sell securities prior to their maturity; (b) prohibiting the use of leverage and margin accounts; and (c) prohibiting the use of short positions-that is, selling securities which ACTA does not own. It is explicitly recognized herein, however, that in a diversified portfolio, occasional measured losses are inevitable, and must be considered within the context of the overall investment return.

### B. Liquidity

ACTA's second objective shall be to have an Investment Portfolio that is sufficiently liquid to ensure that ACTA can meet all normal operating requirements and reasonably expected expenditures.

### C. Rate of Return on Investment

The third objective for ACTA's Investment Portfolio shall be to attain a market-average rate of return through economic cycles consistent with risk limitations as

defined herein, and prudent investment principles. Through implementation of this Policy, the Treasurer and Chief Financial Officer of ACTA shall seek to enhance returns above the market average rate of return.

#### IV. DELEGATION OF AUTHORITY

The Board delegates its authority to invest Funds of ACTA to the Treasurer and Chief Financial Officer, who have full responsibility for transactions until the Board delegation of authority is revoked. The authority to execute investment transactions that will affect the Fund will be limited to the Treasurer and Chief Financial Officer. ACTA may engage the services of an Independent Investment Consultant(s) to assist in the management of ACTA's Funds. Such Independent Investment Consultant(s) may be granted discretion to purchase and sell investment securities in accordance with this Policy. Such Independent Investment Consultant(s) must be registered under the Investment Advisers Act of 1940. All investment decisions and transactions shall be made in strict accordance with state and federal law and this Policy.

#### V. SAFEKEEPING OF SECURITIES

To protect against potential losses by collapse of individual securities dealers, all securities owned by ACTA shall be held in safekeeping by a bank trust department, acting as agent for ACTA under the terms of a custody agreement executed by the bank and ACTA, as authorized by the Governing Board. All securities will be received and delivered using standard delivery versus payment procedures, i.e., ACTA's safekeeping agent will only release payment for a security after the security has been properly delivered. The only exception to the foregoing shall be depository accounts and securities purchases made with: (i) local government investment pools; (ii) time certificates of deposit; and (iii) money market mutual funds, since the purchased securities are not deliverable. Evidence of these instruments will be held by the Treasurer or his designee.

#### VI. REPORTING

##### MONTHLY REPORTS

Monthly investment reports will be submitted by the Treasurer or Chief Financial Officer to the Governing Body within 30 days of the end of each month. Monthly reports will disclose, at a minimum, the following information about the characteristics of ACTA's portfolio:

1. An asset listing of each security showing its par value, cost, independent third-party fair market value as of the date of the report, the source of the valuation, type of investment, issuer, maturity date and interest rate.
2. Transactions during the reporting period.
3. A one-page summary report that shows:
  - a. Average maturity of the portfolio and modified duration of the portfolio;
  - b. Maturity distribution of the portfolio;
  - c. Average portfolio credit quality; and,

- d. Time-weighted total rate of return for the portfolio for the prior one month, three months, twelve months and since inception compared to ACTA's market benchmark returns for the same periods.
4. A statement of compliance with ACTA's Investment Policy, including a schedule of any transactions or holdings which do not comply with this Investment Policy or the California Government Code, including a justification for their presence in the portfolio and a timetable for resolution.
5. A statement denoting ACTA's ability to meet its expenditure requirements for the next six months, or an explanation as to why sufficient money shall not be available.

#### ANNUAL REPORTS

A comprehensive annual report will be presented to the Governing Board. This report will include comparisons of ACTA's return to the market benchmark return, suggest policies and improvements that might enhance the investment program, and will include an investment plan for the coming year.

### VII. QUALIFIED DEALERS

ACTA shall transact business only with banks, savings and loans, Federal savings banks, and investment security dealers in compliance with MSRB Rule G-37. ACTA's Independent Investment Consultant(s), if any, shall transact business only with those securities firms which are on their "approved broker list" and whose annual reports are on file at the Independent Investment Consultant's place of business.

### VIII. AUTHORIZED INVESTMENTS

ACTA's Investment Policy is governed by the California Government Code. This Policy conforms to the Code as well as to customary standards of prudent investment management. Should the provisions of the Code become more restrictive than those contained herein, such provisions will be considered as immediately incorporated in this Policy. Percentage holding limits listed in this section apply at the time the security is purchased.

Within the context of these limitations, the following investments are authorized, as further limited herein:

- A. Bonds issued by ACTA, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by ACTA. Investments in Bonds issued by ACTA shall not exceed 20% of the portfolio.
- B. United States Treasury Bills, Bonds, and Notes, or "when issued" securities of the United States Government for such securities, or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no limitation as to the percentage of the portfolio which can be invested in this category. Maturity shall not exceed the projected dates of ACTA's cash needs or five years, whichever is less.

- C. Registered State Warrants or Treasury notes or bonds (Debt) of the State of California, including bonds, payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the State of California or by a department, board, agency, or authority of the State, so long as such Debt of the State is rated “A” or higher by a nationally recognized statistical-rating organization. Investments in Debt shall not exceed 5% of the portfolio. Maturity shall not exceed the projected dates of ACTA’s cash needs or five years, whichever is less.
- D. Registered Treasury notes or bonds (Local Debt) of any of the other 49 states of the United States of America in addition to California, including bonds, payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the a state or by a department, board, agency, or authority of any other of the 49 states of the United States of America in addition to California, so long as such Local Debt of the State of California or any other of the 49 states of the United States of America is rated “A” or higher by a nationally recognized statistical-rating organization. Investments in Local Debt shall not exceed 5% of the portfolio. Maturity shall not exceed the projected dates of ACTA’s cash needs or five years, whichever is less.
- E. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises (Federal Agency Debt). Investments in Federal Agency Debt shall not exceed 50% of the portfolio. Maturity shall not exceed the projected dates of ACTA’s cash needs or five years, whichever is less.
- F. Commercial Paper. Commercial paper of “prime” quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):
  - 1. The entity meets the following criteria: (a) Is organized and operating in the United States as a general corporation; (b) Has total assets in excess of five hundred million dollars (\$500,000,000); and (c) Has debt other than commercial paper, if any, that is rated “A” or higher by a nationally recognized statistical-rating organization.
  - 2. The entity meets the following criteria: (a) is organized within the United States as a special purpose corporation, trust, or limited liability company; (b) has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond; (c) has commercial paper that is rated “A-1” or higher, or the equivalent, by a nationally recognized statistical-rating organization.

Purchases of eligible commercial paper may not exceed 25% of the market value of the portfolio. No more than 5% of the market value of the portfolio may be invested in commercial paper issued by any one corporation. Maturity shall not exceed 270 days.



- G. Negotiable certificates of deposit issued by a nationally or state-chartered bank or state or federal saving and loan association. Negotiable certificates of deposit (NCDs) differ from other certificates of deposit by their deposit liquidity. They are issued against funds deposited for specified periods of time and earn specified or variable rates of interest. NCDs are traded actively in secondary markets. The maximum maturity of NCDs shall not exceed two years. Transactions in NCDs shall not collectively exceed 20% of the total portfolio. No more than 5% of the market value of the portfolio may be invested in NCDs issued by any one institution. Purchases are limited to institutions which have long-term debt rated “A” or better and/or have short-term debt rated at least “A1” by a nationally recognized statistical-rating organization.
- H. Local Agency Investment Fund. ACTA may invest in the Local Agency Investment Fund (LAIF) established by the State Treasurer for the benefit of local agencies up to the maximum amount permitted by State Law.
- I. Time Deposits. ACTA may invest in non-negotiable time deposits collateralized in accordance with the California Government Code and do so in those banks and savings and loan associations which meet the requirements for investment in negotiable certificates of deposit. Since time deposits are not liquid, no more than 15% of the portfolio may be invested in this category. No more than 5% of the market value of the portfolio may be invested in non-negotiable time deposits issued by any one issuer. The issuer firm shall have been in existence for at least five years prior to the time of investment. Time deposits are required to be collateralized as specified under Government Code Section 53630 et seq. ACTA may waive the first \$100,000 of collateral security for such deposits if the issue is insured pursuant to federal law. Real estate mortgages may not be accepted as collateral. The maximum term for deposits shall be one year. In general, the issuer firm must have a minimum 6% net worth to assets ratio. The issuer firm’s operations must have been profitable during their last reporting period. The issuer firm must have received a minimum overall “satisfactory” rating for meeting the credit needs of California Communities in its most recent evaluation, as provided by Government Code Section 53635.2.
- J. Los Angeles County Treasurer Investment Pool. ACTA may invest in the County’s Investment Pool as prescribed by the California Government Code.
- K. Money Market Funds. ACTA may invest in Money Market Funds that invest solely in U.S. Treasury securities and U.S. Government Agency securities, and repurchase agreements secured by U.S. Treasury securities and U.S. Government Agency securities and which shall have also met the following criteria in either Paragraph (1) or Paragraph (2):
  - 1. Have attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical-rating organizations.
  - 2. Have retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience



investing in U.S. Treasury securities and U.S. Government Agency securities and with assets under management in excess of \$500 million.

No more than 20% of the portfolio may be invested in Money Market Funds, with no more than 10% invested in any one Money Market Fund.

- L. Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Purchases are limited to securities rated “A” or better by a nationally recognized statistical-rating organization. ACTA may invest no more than 30% of the portfolio in Corporate Bonds or Notes and no more than 5% of the portfolio with a single corporate issuer. Maturity shall not exceed the projected dates of ACTA’s cash needs.
- M. Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an “A” or higher rating for the issuer’s debt by a nationally recognized statistical-rating organization and rated in a rating of category of “AA.” Purchase of securities authorized by this subdivision may not exceed 20% of ACTA’s money that may be invested pursuant to this Section M. No more than 5% of the portfolio may be invested in any single Asset-Backed or Commercial Mortgage issuer. There is no limitation on any mortgage security where the issuer is the U.S. Treasury or a Federal Agency/Government Sponsored Enterprise. Maturity shall not exceed the projected dates of ACTA’s cash needs or five years, whichever is less.
- N. Supranational Organizations, provided that issues are U.S. dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank. The securities shall be rated “AA” or higher by a nationally recognized statistical-rating organization, with a maximum maturity not exceeding five years. No more than 30% of the portfolio may be invested in these securities, and no more than 10% of the portfolio may be invested in any single issuer.
- O. Authorized Investments for Bond Funds and Proceeds. Bond funds and proceeds shall be invested in securities permitted by the applicable bond documents. If the bond documents are silent as to the permitted investments, bond funds and proceeds will be invested in securities permitted by this Policy.

In addition to securities authorized for the investment of bond funds and proceeds, bond funds and proceeds may be invested in Guaranteed Investment Contracts and Investment Agreements with issuers of “AA” rating or better by a nationally recognized statistical-rating organization. Such contracts shall have a maximum of five years maturity. Unless otherwise authorized by the applicable bond documents, no

more than 25% of the portfolio may be invested in such contracts and no more than 5% of the portfolio may be placed under contract with a single entity.

With respect to maximum maturities, unless otherwise authorized by the applicable bond documents, bond reserve fund proceeds may be invested in securities with maturities that exceed five years if in the opinion of the Treasurer or Chief Financial Officer it is prudent to make such an investment.

#### XIV. INELIGIBLE INVESTMENTS

Investments not described herein, including but not limited to, repurchase agreements and reverse repurchase agreements, Bankers Acceptances, and common stocks are prohibited from use in ACTA's portfolio. Section 53601.6 of the Government Code specifically disallows investments in inverse floaters, range notes, interest-only strips that are derived from a pool of mortgages, or in any security that could result in zero interest accrual if held to maturity.

#### X. TRADING OF SECURITIES

The purchase and sale transaction must each be recorded separately and any losses or gains on the sale must be recorded.

#### XI. PORTFOLIO ADJUSTMENTS

In the event that an investment percentage-of-portfolio limitation in Section VIII is exceeded due to an incident such as a fluctuation in the portfolio's size, the affected securities may continue to be held to avoid losses. If the sale of an affected security would not result in a loss, the Treasurer or Chief Financial Officer shall consider restructuring the portfolio through sale of the affected securities or other means, and base their decision in part on the expected length of time the portfolio would be out of compliance with the Policy if no sale were made.

#### XII. PORTFOLIO DURATION LIMITATION

The objective of this Policy is to provide a system which will accurately monitor and forecast revenues and expenditures so that ACTA can invest Funds to the fullest extent possible.

The maximum maturity of individual investments shall not exceed the limits set forth in Section VIII. Authorized Investments. However, no investment shall exceed a maturity of five years from the date of purchase unless the Board has granted express authority to make that investment either 1) specifically, 2) as part of the investment provisions relating to a bond issuance and authorized by the applicable bond documents, or 3) as part of an investment program approved by the Board no less than one month prior to the investment. The weighted average duration of the entire portfolio shall not exceed three (3) years.

#### XIII. CERTIFICATION OF UNDERSTANDING

All Financial Institutions and Independent Investment Consultant(s) who do investment-related business with ACTA shall receive a copy of this Policy and sign a Certification of

Understanding. The Certification of Understanding shall state that each employee of the entity serving ACTA:

- A. Has read and understands ACTA's Investment Policy, as well as applicable federal and state laws;
- B. Meets the requirements of Article VII of ACTA's Investment Policy;
- C. Agrees to make every reasonable effort to protect the assets of ACTA from loss;
- D. Agrees to notify ACTA in writing of any potential conflicts of interest; and
- E. Agrees to notify ACTA in writing of any changes in personnel with decision-making authority over ACTA's funds within 24 hours of such event.

#### XIV. MONITORING CREDIT RATINGS

Independent Investment Consultant(s), if any, shall monitor the ratings of all investments in assigned portfolios on a continuous basis. Independent Investment Consultant(s), if any, shall report to the Chief Financial Officer in writing within 24 hours of any credit event for any investment in which there is a credit downgrade to a rating that is lower than that required by Section VIII Authorized Investments. If an existing investment's rating drops below the minimum allowed for new investments made pursuant to this Policy, the Independent Investment Consultant(s) shall also make a written recommendation to the Treasurer and Chief Financial Officer as to whether the downgraded security should be held or sold.

#### XV. POLICY REVIEW

This Investment Policy shall be reviewed regularly by the Treasurer or Chief Financial Officer, and submitted to the Board for its approval at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity, and return, and its relevance to current law and financial and economic trends. The Board shall be responsible for maintaining guidance over this Investment Policy to ensure that ACTA can adapt readily to changing market conditions, and approve any modification to the Investment Policy prior to implementation. Any changes in the Investment Policy shall be reviewed and approved by the Board at a public meeting.

# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: February 24, 2023

From: Kevin L. Scott, Chief Financial Officer 

Subject: INFORMATION on 2023-2024 Renewal of Insurance Coverages

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### **Discussion:**

Each year ACTA's Broker of Record reviews ACTA's insurance needs and solicits bids for insurance coverage on behalf of ACTA. The current insurance policies will need to be renewed effective April 15, 2023. ACTA carries eight types of insurance coverage, as shown on the attached table of coverage for the April 15, 2022 renewal in Transmittal 1.


### **Renewal Process:**

ACTA's insurance year begins on April 15 and ends on April 14 of each year. ACTA purchases insurance policies covering Corridor Property, Railroad Liability, Auto Liability, Office Property, Workers' Compensation, Directors & Officers Liability, and Crime Insurance. Certain policies, including Corridor Property Insurance with an associated Business Interruption Rider are required by the terms of the Master Trust Indenture. Under the terms of the Use & Operating Agreement, the Railroads reimburse ACTA for premiums for the Corridor Property and Railroad Liability policies.

On January 19, 2023, ACTA staff met with representatives from ACTA's Broker of Record, Willis ("Willis"), to begin the annual insurance policy renewal process. During the preliminary meeting, Willis indicated that, as a result of market factors, insurance premiums can be expected to increase by about 10% to 12% this year. With Willis' assistance, ACTA completed the insurance applications for the prospective carriers. Willis will present ACTA's insurance needs, business model, and financial credentials to appropriate insurance markets to solicit coverage proposals on ACTA's behalf. Willis will examine the proposals by coverage type and recommend proposed coverage to ACTA. ACTA and Willis will meet with risk managers from both railroads to review the coverage. Upon concurrence from both railroads, ACTA will bring the final portfolio to the Governing Board to obtain authorization to bind the coverage. Willis is compensated directly by ACTA and receives no commission compensation from any insurance company or provider.

### **Budget Impact:**

Costs for the premiums are included in the FY23 Budget. There is no impact to the FY23 Budget for the renewal.



**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 - 2022 Premium Summary

Coverage	Premium
Corridor Property	\$1,087,220 + \$36,000 TRIA
DIC	\$315,250
Railroad Liability	\$137,235
Excess Railroad Liability	\$54,894
Auto	\$2,052
Office Property	\$5,761
Workers Compensation	\$7,461
Primary D&O	\$55,213
Excess D&O	\$12,164
Crime	\$11,218
Excess Crime	\$5,609
<b>TOTAL</b>	<b>\$1,694,077 plus \$36,000 TRIA</b>

# M E M O

## *Alameda Corridor Transportation Authority*

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To:	Governing Board
Meeting Date:	February 24, 2023
From:	Michael C. Leue, Chief Executive Officer 
Subject:	APPROVE Agreement for On-Call Human Resources Hotline Service through Jinji LLC

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**Recommendation:**

Approve an agreement with Jinji LLC for an on-call human resources hotline service in an amount not to exceed \$36,000 for a three-year term and authorize the Chief Executive Officer or his designee to execute the agreement .

**Discussion:**

ACTA has had a policy to report harassment or other human resource issues to our in-house Administrative Manager or CEO. To avoid any concern that those parties might be biased in certain instances, ACTA investigated the availability of an outside provider of HR Hotline Reporting Services.

ACTA requested quotes from several providers of human resources consulting services and Jinji LLC (“Jinji”) offered the requested services at the best price. The proposed agreement with Jinji is provided in Transmittal 1. The services offer ACTA an employee hotline service for \$220/hour, on an as-needed basis.

Staff recommends that the Governing Board approve the agreement and authorize the CEO to execute the agreement. Upon Governing Board approval and execution of the agreement, ACTA will publish a memo and update the ACTA policy to advise ACTA staff about the availability of the HR Hotline and its purpose.

**Budget Impact:**

Funds for the agreement 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 has reviewed and approved the proposed agreement as to form.

**Transmittals:**

Transmittal 1 – Agreement No. 904 with Jinji LLC



AGREEMENT NO. C0904

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
JINJI LLC

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 JINJI LLC, a California limited liability company, 20555 Devonshire Street, Suite 458, Chatsworth, California 91311 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant to assist ACTA in maintaining a confidential employee grievance and safety hotline; and

WHEREAS, Consultant possesses extensive experience in providing human resources consulting services; and

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

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

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

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

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's Chief Executive Officer ("ACTA's CEO") or his or her designee, whether performance is undertaken by Consultant or third-



parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to ACTA and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon ACTA's CEO's written request, Consultant shall supply ACTA with all agreements between Consultant and its Subconsultants.

## 2. SERVICES TO BE PERFORMED BY ACTA

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

B. ACTA's CEO or his or her designee is designated as the contract administrator for ACTA and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Section 10 (Termination) hereof.

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

## 3. EFFECTIVE DATE AND TERM OF AGREEMENT

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

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

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

or

3. Consultant terminates and cancels all or part of this Agreement for any reason upon giving ACTA thirty (30) days' notice in writing of its election to cancel and terminate this Agreement.

#### 4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

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 therefore. 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.

#### 5. COMPENSATION AND PAYMENT

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

B. The maximum amount payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Thirty Six Thousand Dollars (\$36,000).

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

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

\_\_\_\_\_  
(Consultant's Signature)

D. All invoices shall be approved by ACTA's CEO or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of ACTA business, the same may be approved, audited and processed. If an invoice is not objected to by ACTA, payments are due within forty-five (45) days of an invoice date. For invoices not paid, and not objected to, within the forty-five day period, Consultant reserves the right to bill ACTA at the hourly rate for time spent collecting payment of such invoice.

Invoices shall include the Agreement number, employee name, title/classification, hourly rate, hours worked, current charges and cumulative charges. Subconsultant invoices shall be in a similar format. Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. ACTA may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Where applicable, 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.

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

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

In addition to, or in lieu of, mailing invoices per the above instructions, Consultant may email invoices to [accountspayable@acta.org](mailto:accountspayable@acta.org), and Consultant shall be responsible for confirming receipt of emailed invoices. ACTA shall not be responsible for invoices incorrectly emailed or not received due to technical issues, regardless of the source of such issues.

## 6. RECORDKEEPING AND AUDIT RIGHTS

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

B. During the term of this Agreement, ACTA may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to ACTA. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ACTA at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ACTA. ACTA's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to ACTA, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Section 6 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.

## 7. INDEPENDENT CONTRACTOR

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

## 8. INDEMNIFICATION

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

## 9. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 8, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

### (1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as additional insureds.

(2) 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 Five Hundred Thousand Dollars (\$500,000) 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.

(3) Workers' Compensation and Employer's Liability

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

B. Insurance Procured by Consultant on Behalf of ACTA

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 8, 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 9. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that ACTA, its Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. 904, 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."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Section 9 shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

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

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

(2) Carrier Requirements

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

(3) Notice of Cancellation

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 to ACTA.

(4) Modification of Coverage

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

(5) Renewal of Policies

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

(6) Limits of Coverage

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

D. Accident Reports

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

10. TERMINATION PROVISION

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



Consultant shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving ACTA thirty (30) days' advance written notice.

11. PERSONAL SERVICE AGREEMENT

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

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Section 1 of this Agreement. 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. AFFIRMATIVE ACTION

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

13. SMALL BUSINESS ENTERPRISE PROGRAM

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

14. 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.

15. COMPLIANCE WITH APPLICABLE LAWS

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

16. 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.

17. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify ACTA, its Board and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ACTA of any materials supplied by Consultant in the performance of this Agreement.

18. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ACTA as soon as they are developed, whether in draft or final form. ACTA has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ACTA at all times owns rights provided for in this Section 18 free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ACTA the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by

Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ACTA, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to ACTA, its Board, officers, agents or employees, is not given in confidence. Accordingly, ACTA or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

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

## 19. CONFIDENTIALITY

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

## 20. NOTICES

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

## 21. INTEGRATION

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

## 22. 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.

## 23. 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.

## 24. 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.

25. MODIFICATION IN WRITING

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

26. 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.

27. 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.

28. COUNTERPARTS

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

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

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

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

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

JINJI LLC

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. 12/22

# **EXHIBIT A**

## **SCOPE OF WORK**

Consultant shall perform the following services on an as-needed basis. The services listed below are guidelines as to the type of assignments for which the Consultant will provide human resources assistance to ACTA.

- Consultant shall provide a toll-free phone number to ACTA for use by ACTA employees to contact Consultant to provide information regarding concerns in the workplace.
- Consultant shall provide an email address to ACTA for use by ACTA employees to contact Consultant to provide information regarding concerns in the workplace.
- Consultant shall document in writing all calls and emails received from ACTA. If information is received by phone call, Consultant shall keep in writing all information received including the call date, time, concern/situation, parties involved, potential witnesses, and proposed resolution if stated by the caller.
- Consultant shall provide the documentation for each call or email received to ACTA's Co-General Counsel within seven (7) calendar days of receiving the call or email.
- ACTA may request Consultant to support any subsequent process with investigative/interview services, including gathering statements from witnesses and any other parties involved. Any verbal statements received will be documented accurately in writing. Consultant shall store and maintain written statements securely and confidentially.
- Upon request, Consultant will assist ACTA Co-General Counsel and/or other appropriate ACTA representatives to assist in determining handling of complaints received.

## **EXHIBIT B**

### **Compensation**

In consideration for the Services to be performed by Consultant, ACTA agrees to pay Consultant an hourly fee of Two Hundred Twenty Dollars (\$220.00) based on ACTA's current locations, employee count and service need. Notable change in employee count or states outside of California serviced may increase monthly fee, upon written mutual agreement between ACTA and Consultant.

Any background checks, credit checks, drug screening, or other pre-employment requirements run at the request of ACTA will be billed to ACTA at the actual cost to the Consultant plus 5% of such cost for processing. ACTA shall pay Consultant for any other services rendered by Consultant not otherwise set forth in 'HR Services' section on page in an amount to be agreed upon by the parties hereto.



**Exhibit C**  
**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:* SBE/VSBE/MBE/WBE/OBE/DVBE	Original Proposed SBE Percentage	Amount Paid This Month	Amount Paid to Date	Overall Contract Amount Percentage (Paid to Date)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

\* Indicate all certifications held by each subcontractor

## EXHIBIT D

### **SMALL BUSINESS ENTERPRISE PROGRAM**

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

An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this 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 24, 2023
From:	Kevin C. Scott, Chief Financial Officer 
Subject:	APPROVE Consent to Assignment and Assumption of Agreement No. C0788 to Foster & Foster Consulting Actuaries, Inc. from Bartel Associates, LLC

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### **Recommendation:**

Approve the proposed Consent to Assignment and Assumption of Agreement No. C0788 between the Alameda Corridor Transportation Authority and Bartel Associates, LLC (Bartel) to Foster & Foster Consulting Actuaries, Inc. (Foster & Foster) and authorize the Chief Executive Officer or his designee to execute said agreement.

### **Discussion:**

At its October 2007 meeting, the Governing Board approved ACTA's participation in the prefunding plan administered by the CalPERS Board of Administration for Other Post Employment Benefits (OPEB). The Governing Board also approved making an initial deposit and future annual deposits as necessary to meet continuing obligations.

The Government Accounting Standards Board (GASB) requires governmental entities to calculate the liability associated with certain retirement benefits to past and present employees. The present value of the obligation must be determined by a licensed actuary, and requires a periodic update (biannual) of the actuarial valuation and determination of an annual payment amount made to the CalPERS OPEB account. Bartel has provided services required by GASB 68 including preparation of the draft report. The information is required in order to complete ACTA's annual audit report.

In July 2007, Agreement No. C0788 was entered into with Bartel Associates LLP for the required valuations. Since the date of the original Agreement, changes in Accounting Standards and the implementation of GASB 75, replacing GASB 45, require most public entities to obtain a biannual actuarial valuation. With the substantial growth of business, Bartel Associates, LLP became an LLC.

After a 2007 competitive selection process, Bartel was selected to provide the required GASB 45 actuarial valuations. Agreement No. 7088 commenced July 1, 2007 for a term of one year through June 30, 2008 in the amount of \$14,500 with an option to extend an additional two years. Board approval of the agreement was not required in 2007 because the contract amount was within the contracting authority of the Chief Executive Officer, in that the contract was less than the delegated authority amount of \$50,000. Two subsequent amendments extended the term through June 30, 2010 increasing the contract value to \$25,000.

At its August 2009 meeting, the Board approved a six-year extension through June 30, 2016 and a \$50,000 increase in contract value from \$25,000 to \$75,000. At its June 2016 meeting, the Board approved a two-year extension through June 30, 2018 and a \$20,000 increase in contract value to \$95,000. At its June 2018 meeting, the Board approved a one-year extension through June 30, 2019 that resulted in an increase of \$10,000.

At its November 15, 2019, meeting, the Board approved the Ninth Amendment to Agreement No. 7088. The amendment extended the term for five years through December 31, 2024, added \$75,000 to the contract value for a total not to exceed compensation amount of \$180,000, and increased the hourly rates.

Foster & Foster is an independent national actuarial consulting firm that specializes in providing retirement and health & welfare consulting services to sponsors of public, private, and multi-employer benefit plans. Foster & Foster acquired Bartel effective July 1, 2022. Foster & Foster will perform actuary services with the same employees as Bartel. In order to continue to perform the actuarial services for ACTA, Foster & Foster has agreed to assume the terms and conditions of Agreement No. 0788 pursuant to the Assignment and Assumption Agreement (Transmittal 1).

Staff recommends that the Governing Board approve the Assignment and Assumption Agreement and authorize the CEO to execute the agreement.

**Budget Impact:**

There is no impact to the FY23 Program Budget for the amendment and assignment of the agreement.

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed and approved the proposed Assignment and Assumption of Agreement No. C0788 as to form.

**Transmittals:**

Transmittal 1 – Assignment & Assumption of Agreement No. C0788 to Foster & Foster Consulting Actuaries, Inc.

AGREEMENT NO. 788

CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT NO. C0788  
BETWEEN THE ALAMEDA TRANSPORTATION CORRIDOR AUTHORITY  
AND BARTEL ASSOCIATES, LLC  
TO  
FOSTER & FOSTER CONSULTING ACTUARIES, INC.

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT NO. C0788 (hereinafter referred to as "Assignment") is entered into by and between the ALAMEDA TRANSPORTATION CORRIDOR AUTHORITY, a California Joint Powers Authority ("ACTA"), acting by and through its Governing Board ("Board") and FOSTER & FOSTER CONSULTING ACTUARIES, INC. a Florida corporation, with an office location at 411 Borel Avenue, Suite 620, San Mateo, California 94402 ("Foster & Foster" or "Assignee").

WHEREAS, in July 2007, ACTA entered into Agreement No. C0788 ("Agreement"), with Bartel Associates, LLC ("Bartel") for actuarial services, which Agreement is attached hereto and incorporated by reference as Exhibit A; and

WHEREAS, the Agreement has been amended nine times increasing the term and compensation amounts, said Amendments are attached hereto and incorporated by reference as Exhibit B; and

WHEREAS, Foster & Foster acquired Bartel effective July 1, 2022, as further described in a letter from Foster & Foster to ACTA dated July 28, 2022, said letter is attached hereto as Exhibit C; and

WHEREAS, notwithstanding the restrictions set forth in Section XVI of the Agreement, the parties seek to assign Agreement No. C0788 to Foster & Foster which agrees to assume all rights and responsibilities of the Agreement as set forth herein and ACTA agrees to such assignment and assumption.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The Assignment and all rights, obligations, liabilities and provisions thereunder shall be subordinate to, and Assignee shall strictly comply with and not conflict with, all terms, covenants and conditions of the Agreement, which Assignee's representatives agree they have read. Assignee agrees to operate in accordance with and to assume all rights, obligations, operations, restrictions, limitations and liabilities associated with the Agreement.

2. Assignee shall not, by amendment or otherwise, alter the rights and obligations contained in the Agreement, approved by this Assignment, without the prior written consent of ACTA. Consent to one such change shall not be deemed to be consent to any subsequent change.

3. Assignee shall not further assign, sell, or otherwise transfer its interest in the Agreement as set forth in Section XVI of the Agreement.

4. The Agreement and this Assignment shall be construed and enforced in accordance with the laws of the State of California and venue shall lie in the appropriate U.S. Federal Court or California Superior Court located in Los Angeles County.

5. This Assignment 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 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 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 Assignment.

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

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
MICHAEL C. LEUE, P.E.  
Chief Executive Officer

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

FOSTER & FOSTER CONSULTING  
ACTUARIES, INC.

Dated: \_\_\_\_\_, 2023

By \_\_\_\_\_

Type Name:

Type Title:

\_\_\_\_\_

Attest \_\_\_\_\_

Type Name:

Type Title:

\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

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

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

# **Exhibit A**

**Agreement No. C0788**

SENT  
ACTA DCC

SEP 15 '08

10788 01 04 000

0163391

By: C. Nelson

**AGREEMENT NO. C0788**

**AGREEMENT BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY AND BARTEL ASSOCIATES, LLC**

THIS AGREEMENT, made and entered into by the **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY** ("ACTA" or "Authority"), acting by and through its Governing Board, and **BARTEL ASSOCIATES, LLC**, ("Consultant").

**WITNESSETH:**

**WHEREAS**, ACTA has a need for specialized services and expertise relating to GASB 45 – Accounting for Other Post Employment Benefits; and

**WHEREAS**, ACTA desires to retain Consultant to provide such services from time to time as directed by ACTA, and Consultant desires to provide such services.

**NOW, THEREFORE**, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, IT IS MUTUALLY AGREED AS FOLLOWS:

**Section I. SECTION HEADINGS.**

The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

**Section II. TERM OF AGREEMENT.**

The term of this agreement shall be deemed to have commenced as of July 1, 2007 and, subject to the provisions of Section IX, shall be for a term of one year with an option of ACTA to extend the term for up to an additional two years.

**Section III. SERVICES TO BE PERFORMED BY CONSULTANT.**

Consultant shall perform and provide said specialized services as ACTA's Chief Financial Officer (ACTA's CFO), deems necessary or advisable, or reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standard and practice of professionals involved with GASB 45.

**OPEB (Other Post Employment Benefits)** services which Consultant shall provide include:

- review and determination of plan benefits per MOUs, bargaining agreements, plan summaries, etc.
- review of plan demographics and determination of actuarial methods and assumptions
- calculation of GASB 45 costs and liabilities
- review and analysis regarding funding alternatives
- preparation of draft financial statement reporting and disclosure information
- alternative plan design cost impact studies
- analysis of defined benefit and defined contribution plan designs
- open and closed group projections, including Annual OPEB Cost (AOC) cost and benefit payout projections
- review and analysis of life insurance contracts

The Consultant's work plan and schedule, and data to be provided by ACTA are detailed in Appendix C, "Work Plan, Schedule, and Data."

#### **Section IV. PAYMENT OF FEES.**

A. **Compensation.** ACTA shall pay Consultant in accordance with the rates established in Appendix A, "Fees" as compensation for satisfactory performance of the services provided pursuant to Section III of this Agreement.

B. Payment to Consultant shall be made by ACTA from time to time in due course, but not more frequently than once each month, and only upon the submission of an invoice for the services rendered and reimbursable costs and expenses incurred in connection with the services rendered. Consultant shall certify on said invoice as follows:

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

Further, Consultant shall certify that its members and employees have performed the work and incurred the costs and expenses in full conformance with the provisions of this Agreement and that Consultant is entitled to receive said amount pursuant to the terms of this Agreement. In the event ACTA's CFO assigns additional matters, a separate and distinct identification shall be reflected on each invoice submitted to ACTA.

C. In addition, ACTA shall reimburse Consultant for all reasonable, out-of-pocket expenses incurred in performing the work specified herein. Such out-of-pocket expenses over \$50.00 must be supported by appropriate documentation for reimbursement. Such expenses may, without limitation, include travel and subsistence expenses which would be reimbursable to ACTA employees if incurred by them in the performance of their duties, printing and duplication costs, facsimile charges and charges for long distance telephone calls. Such out-of-pocket expenses shall not exceed two thousand dollars (\$2,000) during the term of this Agreement, unless authorized by amendment.

D. Attached to the invoice shall be a brief statement describing generally the work performed during the period on ACTA's behalf.

E. Consultant shall not substitute key staff described in Appendix B, "Project Team" without the express consent of ACTA's CFO.

F. Consultant and ACTA mutually recognize that the specialized services performed may be paid for with **public funds** and that, given this fact, a heightened duty of care exists to ensure scrupulous adherence to principles of moderation and cost consciousness to carry forth the end towards which Consultant's efforts are directed.

G. Consultant and ACTA agree that in no event shall the total of all compensation and expenses paid to Consultant exceed fourteen thousand, five hundred dollars (\$14,500).

#### **Section V. CONTINUED REPRESENTATION.**

All information, documents, records, reports data or other materials furnished to Consultant or other such information, documents, records, data or other materials to which Consultant has access during its performance pursuant to this Agreement, are deemed confidential and is property of ACTA. Consultant shall not make oral or written disclosure thereof, other than is necessary for its performance hereunder, without prior written approval of ACTA's CFO.

#### **Section VI. SUCCESSION OF INTEREST.**

This Agreement shall be binding upon and shall inure to the benefit of Consultant as presently constituted or as changed hereafter by the death or retirement therefrom of any present Consultant, or by the death or retirement of any thereof.

#### **Section VII. AUTHORIZED REPRESENTATIVES.**

ACTA's CFO represents ACTA on all matters related to this Agreement.

#### **Section VIII. NOTICE.**

The following addresses shall serve as the places to which notices and other

correspondence between the parties shall be sent:

A. Consultant:

John Bartel  
BARTEL ASSOCIATES, LLC  
411 Borel Avenue, Suite 445  
San Mateo, California 94402

B. ACTA's Address:

James P. Preusch, CFO  
ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY  
One Civic Plaza, Suite 350  
Carson, California 90745

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

#### **Section IX. TERMINATION.**

This Agreement and all services to be rendered hereunder may be terminated at any time by ACTA, acting through ACTA's CFO upon thirty (30) days written notice from ACTA, with or without cause. In such event, all Consultant work product, finished and unfinished documents, reports, pleadings, memoranda, etc., at the option of ACTA's CFO, shall become the property of ACTA and shall be delivered to ACTA's CFO or to any party he may designate within seven (7) days of any such termination. In the event of such termination, Consultant shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of particular facts and circumstances involved in such termination.

#### **Section X. EMPLOYMENT OF OTHER CONSULTANTS, SPECIALISTS OR EXPERTS.**

Consultant shall not employ or otherwise incur any obligation to pay other consultants, specialists or experts for services in connection with this Agreement without prior written approval of ACTA's CFO.

#### **Section XI. AUDIT AND INSPECTION OF RECORDS.**

After receipt of reasonable notice and during regular business hours of Consultant, Consultant shall provide ACTA, or agents of ACTA, such access to Consultant's books, records, support documents and facilities as ACTA deems necessary to examine, audit and inspect all accounting books, records, work data, documents and activities directly related hereto. Consultant shall maintain such books, records, data and documents in accordance with

generally accepted accounting principles and shall clearly identify and make such items readily accessible to ACTA, or agents of ACTA during Consultant's performance hereunder and for a period of three (3) years from the date of final payment by ACTA hereunder.

#### **Section XII. INSURANCE.**

Consultant hereby warrants that upon full execution of this Agreement, Consultant now has and will maintain throughout the term of this Agreement, Worker's Compensation Insurance as required by the laws of the State of California. Such policy or policies shall be procured, filed and approved in strict accordance with the provisions of Section 11.47 through 11.56 of the Los Angeles Administrative Code and shall provide therein that the same shall not be subject to cancellation, reduction in coverage or non-renewal except after written notice to ACTA's CFO by certified mail, return receipt requested, at least thirty (30) days prior to the effective date thereof. Evidence of the issuance of such policy or policies, reflecting the applicable policy number(s) and containing thereon the above thirty-day notice provision, shall be filed with ACTA within thirty (30) days of full execution.

#### **Section XIII. ACTA HELD HARMLESS.**

Consultant shall defend and shall keep and hold ACTA, including members of its Governing Board, and ACTA's officers, agents, servants and employees, harmless from any and all costs, liability, damage or expenses (including costs of suit and fees and reasonable expenses of legal services), claimed by anyone by reason of injury to or death of persons, or damage or destruction of property, including property of Consultant, sustained as proximate result of the acts or omissions of Consultant, agents, servants or employees, in their performance of the work described herein. This provision does not constitute an indemnification of ACTA by Consultant for liability arising from the wrongful or negligent acts of ACTA or its employees, nor do the parties intend by this provision to alter their legal obligations under common law with respect to any liability that might be incurred by ACTA in acting upon the advice given to ACTA by Consultant.

#### **Section XIV. AGREEMENT CONTAINS ENTIRE CONTRACT.**

The provisions of this Agreement contain the entire terms of the agreement between the parties hereto and said Agreement may not be changed or modified in any manner except by written amendment fully executed by ACTA and Consultant.

#### **Section XV. LAW OF CALIFORNIA APPLIES.**

This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of California. 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.

**Section XVI. NO ASSIGNMENT.**

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

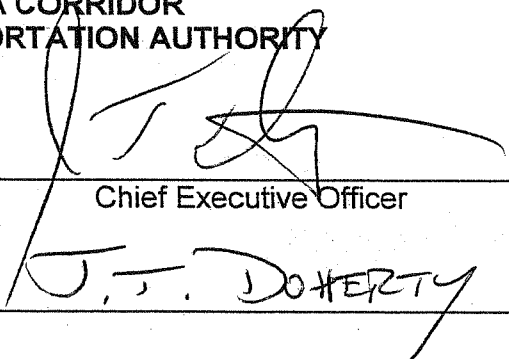
**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement.

**ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY**

Date

7/13/07

By

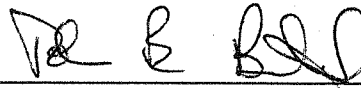
  
Chief Executive Officer

**BARTEL ASSOCIATES, LLC**

Date

July 9, 2007

By



\_\_\_\_\_  
(Print/Type Name and Title)

Approval as to form:



ACTA CO General Counsel



## Appendix A - FEES

Fees shall be a function of the hours worked by each professional on the project and the hourly billing rates. Hourly rates are as follows:

Team Member	Hourly Rate
President & Senior Actuary	\$250
Actuary	\$200
Consultant	\$175
Actuarial Analyst	\$150
Actuarial Trainee	\$125
Administrative Support	\$75

Estimated budget based on the Authority's retire healthcare plan design and the number of employees and eligible retirees using preliminary information provided by ACTA is approximately \$8,500.

Project elements and related estimated fees are:

Project Element	Estimated Fee
Actuarial Valuation	\$5,500
Discount Rate Sensitivity (2 discount rates)	500
Methods & Assumptions Meeting	1,250
Preliminary Results Meeting	<u>1,250</u>
Total	\$8,500

Note that:

Fee estimate assumes that:

- Post-retirement benefits for the valuation will include medical benefits, but no Authority-paid dental, vision, or life insurance benefits.
- Participant census data will be provided completely and accurately in the format requested.
- Costs and liabilities will be provided using one funding method and one set of assumptions including 2 investment return scenarios (funded and not funded). Results will conform to CalPERS' pre-funding requirements. (There is no difference in fees if the study does or does not conform to CalPERS' pre-funding requirements.)
- Consultant shall have at least 2 meetings with the Authority: one to review the data, plan provisions, methods, and assumptions and a second to review preliminary valuation results.

- Consultant shall provide 2 discussion outlines for meetings: a "Methods & Assumptions" outline for the first meeting with the Authority and a "Preliminary Results" outline for the second meeting.
- There shall be no additional charges for expenses (e.g., travel, telephone, copying, etc.). The hourly rates listed above include Consultant's costs for these items.

Consultant agrees to not bill more than \$9,500 unless the scope of the project changes as described below.

- Consultant shall invoice the Authority monthly based on time incurred, subject to the above maximum fee.
- The above fees might be higher if the scope of the project changes from that described above, for example:
  - The retiree healthcare promise differs from the information provided.
  - Participant data is not relatively clean and free from internal consistencies or is not provided in electronic format (Excel worksheet).
  - Valuation results are needed for additional actuarial assumption sets, funding methods, or alternative plan designs.
  - The Authority requests that GASB 45 results be broken down by employee groups.
  - The Authority requests additional meetings such as more than 2 meetings to discuss actuarial methods and assumptions and to present the study results or a meeting with outside auditors. Consultant shall base fees for an additional meeting on billing rates above and the time needed for the meeting and preparation. For example, if the Authority requests Consultant's presence at an additional meeting where Consultant can use existing Preliminary or Final Results outline, Consultant fee would only include time spent at the meeting. For example, a 2-hour meeting would cost \$500.

Consultant has not included fees to prepare a formal valuation report, an executive summary, or a draft footnote because they are not needed until the Authority adopts GASB 45 and decides whether or not it will pre-fund benefits. Consultant presentation outline shall contain the information needed for the Authority's CAFR. Consultant shall provide additional reports, such as a formal valuation report and financial statement footnote, at the Authority's request. Consultant estimates the fees at \$2,000 for a formal valuation report and \$1,000 for a draft financial statement footnote. The cost of preparing an executive summary, if needed, will be approximately \$1,500.

Additional studies, such as to explore alternative assumptions or to address potential benefit design changes, shall be billed at Consultant's hourly rates. Consultant shall provide a final fee estimate after the scope of the additional studies project is defined and before work is begun.

## **Appendix B – PROJECT TEAM**

The project team that will be assigned to work with Authority shall include:

- John Bartel, President
- Doug Pryor, Vice President
- Bianca Lin, Assistant Vice President

John Bartel shall function as engagement manager and will be responsible for the relationship and day-to-day direction of the project. John is an Associate of the Society of Actuaries, an Enrolled Actuary, a Fellow of the Conference of Actuaries, and a Member of the American Academy of Actuaries. He has extensive public sector experience with GASB 45 and retirement consulting with over 120 public entities in California that are covered by the California Public Retirement System (CalPERS). He has appeared before many public agency boards and city councils and is known for his clarity.

Doug Pryor and Bianca Lin will provide actuarial and technical support. Doug has 16 years experience in the retirement and employee benefits area. He is an Associate of the Society of Actuaries, an Enrolled Actuary, and has a Masters Degree in Statistics. Bianca has 15 years experience in the retirement and employee benefits area. She is an Associate of the Society of Actuaries, an Enrolled Actuary, and has a Masters Degree in Statistics.

## **Appendix C - WORK PLAN, SCHEDULE AND DATA**

### **Project Work Plan**

Actuarial valuation includes two levels to a GASB 45. The first level is technical compliance with GASB 45, to assist with technical compliance with the standard, and the service of preparing the required financial reporting and disclosure.

The second level goes beyond reporting and disclosure issues, and includes assisting management with an understanding of GASB 45, the actuarial assumptions and methods, the valuation results, and the financial statement impact, including a review of the plan design and participants.

Consultant shall accomplish both levels to ACTA's GASB 45 study by, meeting with management in person at least twice during the valuation process. Consultant shall meet with the Authority to review employee data, plan provisions, and actuarial assumptions. The meeting shall help to ensure that Consultant receives the proper information to begin the valuation. Consultant shall meet at a second time with ACTA staff to review the valuation results and their financial impact.

Consultant's actuarial valuation process includes the following steps:

- Data Collection - The Authority will provide documentation of plan provisions and employee census information including individual plan and coverage elections.
- Data Reconciliation - Consultant shall review the plan and participant data and provide a list of any questions.
- Methods & Assumptions Meeting - Consultant shall meet with the Authority for an initial planning meeting to review the plan design and participant data. Consultant shall also review the actuarial assumptions and funding methods and determine an appropriate final project timetable with the Authority.

GASB 45 requires that the discount rate be based on the source of funds used to pay benefits. For funded plans, this means the underlying expected long-term rate of return on plan assets. (CalPERS currently requires a discount rate of 7.75% for agencies that pre-fund retiree medical benefits through the California Employers' Retiree Benefit Trust Fund.)

GASB 45 requires that actuarial assumptions be consistent with retirement plan assumptions. In addition, healthcare plans funded through CalPERS are required to use certain mandated assumptions.

It is important that the Authority understand the methods and assumptions used and

the impact on GASB 45. The assumptions set by the Authority, subject to Consultant's actuarial guidance and standards of practice guide the results of the GASB 45 study.

Valuation Processing - Consultant shall prepare the actuarial valuation using ProVal software, a comprehensive and widely used and respected retirement benefit valuation system developed by Winklevoss Technologies, LLC.

GASB 45 requires that any "implied subsidy" be included in the GASB 45 retiree costs and liabilities for non-community rated plans. Implied subsidies arise when retiree premiums do not represent the expected costs of the underlying retiree group, for example, when the same premium rates are charged for active employees and pre-Medicare eligible retirees. Retiree health plans covered by the CalPERS healthcare program are generally considered community rated and not required to value this subsidy.

Consultant shall provide procedures for quality control which include the checking of computer programs and calculations by a second actuary and the review of results and presentation materials by senior actuaries.

- Preliminary Results Meeting - Consultant shall meet with the Authority to review the preliminary valuation results prior to the completion of a formal actuarial valuation report. Consultant's preliminary results presentation shall be in a discussion outline format and shall include a benchmark survey comparing the Authority's GASB 45 information with approximately 100 other agency GASB 45 plan studies prepared by Bartel Associates.
- Valuation Report - If the Authority adopts GASB 45 and uses the actuarial study results as the basis for reporting and disclosure, Consultant shall, at the Authority's request, prepare a formal valuation report including an actuarial certification. Consultant shall also prepare an executive summary of the valuation results and a draft GASB footnote, if needed.

#### Actuarial Valuation Discussion Outline

Consultant's actuarial valuation discussion outline shall be clear, concise and understandable to non-actuaries. Consultant's outline shall include:

- Summary of plan provisions.
- Summary of the data used for the valuation including:
  - employee counts and average ages, service, pay, etc. by employee group
  - active and retiree coverage elections by healthcare plan
  - retiree coverage (single, 2-party, family) statistics by age
  - active age/service distributions

- Summary of actuarial methods and assumptions.
- GASB 45 accounting information, including benefit costs and obligations as outlined below.
- Comparison of the Authority's costs and obligations with that of other agencies in Consultant's database.

The discussion outline will include the following GASB 45 information:

- Actuarial value of benefits, including:
  - Present Value of Future Benefits
  - Actuarial Accrued Liability (AAL), broken down by active and retired employees
  - Plan Assets
  - Unfunded Actuarial Accrued Liability (UAAL)
  - Normal Cost
- Annual Required Contribution (ARC), as a dollar amount and as a percentage of payroll, identifying:
  - Normal Cost
  - Amortization of the UAAL
- Annual OPEB Cost (AOC).
- Net OPEB Obligation (NOO).
- Sensitivity analysis, including:
  - 2 investment return scenarios (e.g., funded and not funded discount rates)
  - Alternative amortization periods for the UAAL (e.g., 20 and 30 years).
- Estimated gain/loss analysis showing the reasons for changes in the AAL from the prior valuation, if any.
- Projected contribution and AOC versus "pay-as-you-go costs.

## Project Schedule

Consultant shall use a preliminary 8 week project schedule for the actuarial valuation. For example, if the Authority provides census data and plan information on July 2, 2007, a possible work schedule would be as follows:

Project Steps	Estimated Dates
The Authority provides participant data and plan information to Bartel Associates.	July 2, 2007
Bartel Associates meets with the Authority to review the employee data, plan design, and actuarial funding method and assumptions, including the discount rate.	July 16, 2007 ≈ 2 weeks after (1)
Bartel Associates meets with the Authority to present preliminary valuation results.	August 13, 2007 ≈ 4 weeks after (2)
Bartel Associates provides a final valuation discussion outline.	August 27, 2007 ≈ 2 weeks after (3)

Consultant shall complete the valuation within this timeframe if the information requested is provided quickly and accurately.

## Data

The Authority shall provide Consultant with the following information:

- Summary of plan provisions and copies of the most recent MOUs for bargained employee groups and agreements for unrepresented groups.
- Total pay-as-you-go costs for the last 2 complete fiscal years (2004/05 and 2005/06) and an estimate for the current fiscal year.
- The Authority's CalPERS (PEMHCA) healthcare program contract or resolution joining PEMHCA.
- Investment returns and restrictions for the last 10 years or as many years as are available.
- Employee census information, in electronic format (Excel spreadsheet), including the information shown on the next page.
  - Include any active employees who have waived coverage.
  - The Authority shall make available a data extract of the Authority's CalPERS PEMHCA
  - In order to maintain confidentiality Social Security Numbers shall not be

provided.

Consultant may need additional data, depending on the review of the Authority's benefit promise.

### DATA

GASB 45 Census Information		
Data Field	Actives	Retirees
Name	Yes	Yes
Employee Number	Yes	Yes
Gender	Yes	Yes
Birth Date	Yes	Yes
Spouse's Birth Date	Yes (if available)	Yes (if available)
Hire Date	Yes	Yes (if available)
Retirement Date	N/A	Yes
Retirement Type	N/A	Service, Disability
Employee Classification	Yes	Yes
Bargaining Group	Yes	Yes
Compensation	Yes (Base or PERSable Pay)	N/A
Medical Plan	Yes	Yes
Medical Plan Code	CalPERS Plan Code	CalPERS Plan Code
Medical Coverage	Yes (Single, 2-Party, Family)	Yes (Single, 2-Party, Family)
Medical Premium Authority Paid	N/A	Yes
Medical Premium — Retiree Paid	N/A	Yes



# **Exhibit B**

**Agreement No. C0788**

**Amendments 1 - 9**

# ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY

C0788 - Letter Agreement

Consulting Services – GASB-45

## AMENDMENT NO. 1

CONSULTANT: **Bartel Associates LLC**

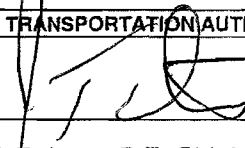

SUMMARY Of CHANGE	THE AGREEMENT DURATION IS <i>INCREASED</i> BY: <b>365</b> CALENDAR DAYS THE AGREEMENT VALUE IS <i>UNCHANGED NOT TO EXCEED</i> <b>\$14,500.</b>
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### THE AGREEMENT IS MODIFIED AS FOLLOWS:

Per **Section II**, the term of the Agreement is extended for one year, commencing on July 1, 2008 through June 30, 2009.

Original Agreement	\$ 14,500
Amendment No. 1	\$ -0-
<b>Total (not to exceed)</b>	<b>\$ 14,500</b>

Except as provided herein all terms and conditions of the Agreement remain unchanged. The terms and conditions of this agreement modification constitute full accord and satisfaction for all cost and time of performance related to the change described or referenced herein.

ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY	CONSULTANT: Bartel Associates LLC
Signature: 	Signature: 
Name/Title: John T. Doherty, P.E., Chief Executive Officer	Name/Title: <b>John E. Bartel, President</b>
Date Executed: <b>9/15/08</b>	Date Accepted: <b>September 12, 2008</b>

**SECOND AMENDMENT TO AGREEMENT NO. 788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES LLC**

**THIS AMENDMENT NO. 2** to Agreement No. 788 is made and entered into by the Alameda Corridor Transportation Authority ("ACTA"), and Bartel Associates LLC ("Bartel").

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 for a term of one year, until June 30, 2008 with an option for ACTA to extend the term for up to an additional two years for services and expertise relating to GASB 45- Accounting for Other Post Employment Benefits, and a total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$14,500; and

**WHEREAS**, Amendment No. 1 was executed on September 15, 2008 to extend the term of the Agreement by one year through June 30, 2009.

**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section II – Term of Agreement is hereby amended to extend the term of the Agreement for one year, from July 1, 2009 through June 30, 2010.
2. Section IV – Payment of Fees, Item G., is hereby amended to increase the total of all compensation and expenses paid to Bartel by \$10,500 to a not-to-exceed amount of Twenty-five Thousand Dollars (\$25,000).

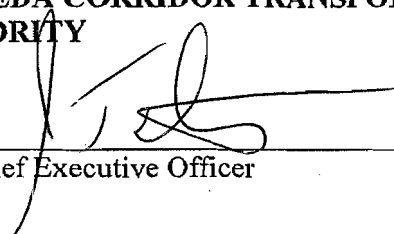
**IN WITNESS WHEREOF**, the parties hereto have executed this Second Amendment to Agreement No. 788 as provided below:

**ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY**

Date

3/31/09

By:

  
Chief Executive Officer

**BARTEL ASSOCIATES, LLC**

Date

By:

  
John E. Bartel - President  
(Print/Type Name and Title)

APPROVED AS TO FORM:

City Attorney – Robert E. Shannon

By:   
Deputy City Attorney

Date: 4-2, 2009

**THIRD AMENDMENT TO AGREEMENT NO. 788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES LLC**

**THIS AMENDMENT NO. 3** to Agreement No. 788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 for a term of one year, until June 30, 2008 with an option for ACTA to extend the term for up to an additional two years for services and expertise relating to GASB 45- Accounting for Other Post Employment Benefits, and a total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$14,500; and

**WHEREAS**, Amendment No. 1 was executed on September 15, 2008 to extend the term of the Agreement by one year through June 30, 2009; and,

**WHEREAS**, Amendment No. 2 was executed on March 31, 2009 to increase the total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$10, 500, and to extend the term for an additional year through June 30, 2010; and,

**WHEREAS**, at its August 13, 2009 meeting, ACTA's Governing Board approved extending the term for six years through June 30, 2016 and increasing the total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$50,000.

**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section II – Term of Agreement is hereby amended to extend the term of the Agreement for six years, from July 1, 2010 through June 30, 2016.
2. Section IV – Payment of Fees, Item G., is hereby amended to increase the total of all compensation and expenses paid to Bartel by \$50,000 to a not-to-exceed amount of Seventy-five Thousand Dollars (\$75,000).

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement No. 788 as provided below:

Date 9/17/09

**ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY**

By: [Signature]  
Chief Executive Officer

**BARTEL ASSOCIATES, LLC**

Date September 12, 2009

By: [Signature]  
John E. Bartel, President  
(Print/Type Name and Title)

**APPROVED AS TO FORM:**  
City Attorney

By: [Signature]  
Heather McCloskey  
ACTA Co-General Counsel

Date: September 7, 2009

**FOURTH AMENDMENT TO AGREEMENT NO. 788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES LLC**

**THIS AMENDMENT NO. 4** to Agreement No. 788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 for a term of one year, until June 30, 2008 with an option for ACTA to extend the term for up to an additional two years for services and expertise relating to GASB 45- Accounting for Other Post Employment Benefits, and a total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$14,500; and

**WHEREAS**, Amendment No. 1 was executed on September 15, 2008 to extend the term of the Agreement by one year through June 30, 2009; and,

**WHEREAS**, Amendment No. 2 was executed on March 31, 2009 to increase the total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$10, 500, and to extend the term for an additional year through June 30, 2010; and,

**WHEREAS**, at its August 13, 2009 meeting, ACTA's Governing Board approved extending the term for six years through June 30, 2016 and increasing the total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$50,000; and

**WHEREAS**, Amendment No. 4 decreases the total not-to-exceed amount by \$27,755 for a total contract value not-to-exceed \$47,245.

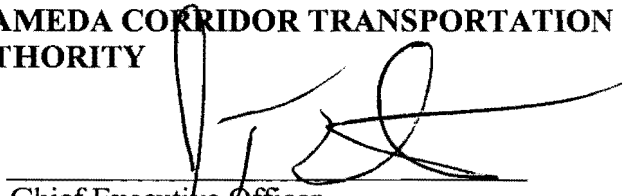
**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section IV – Payment of Fees, Item G., is hereby amended to decrease the total of all compensation and expenses paid to Bartel by \$27,755 to a not-to-exceed amount of Forty Seven Thousand, Two Hundred Forty-five Dollars (\$47,245).

**IN WITNESS WHEREOF**, the parties hereto have executed this Fourth Amendment to Agreement No. 788 as provided below:


Date 8/25/11

**ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY**


By:   
Chief Executive Officer

**BARTEL ASSOCIATES, LLC**

Date \_\_\_\_\_

By:   
John E. Bartel, President  
(Print/Type Name and Title)

**APPROVED AS TO FORM:**  
City Attorney - Robert E. Shanon

By:   
Deputy City Attorney

Date: 8-24-11



OCT 11 2013      **FIFTH AMENDMENT TO AGREEMENT NO. 788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES LLC**

**THIS AMENDMENT NO. 5** to Agreement No. 788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 for a term of one year, until June 30, 2008 with an option for ACTA to extend the term for up to an additional two years for services and expertise relating to GASB 45- Accounting for Other Post Employment Benefits, and a total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$14,500; and

**WHEREAS**, Amendment No. 1 was executed on September 15, 2008 to extend the term of the Agreement by one year through June 30, 2009; and,

**WHEREAS**, Amendment No. 2 was executed on March 31, 2009 to increase the total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$10, 500, and to extend the term for an additional year through June 30, 2010; and,

**WHEREAS**, at its August 13, 2009 meeting, ACTA's Governing Board approved extending the term for six years through June 30, 2016 and increasing the total not-to-exceed amount for all compensation and expenses paid to Bartel in the amount of \$50,000; and

**WHEREAS**, Amendment No. 4 was executed on August 25, 2011 to decrease the total not-to-exceed amount by \$27,755 for a total contract value not-to-exceed \$47,245; and,

**WHEREAS**, Amendment No. 5 increases the total not-to-exceed amount by \$27,755 for a total contract value not-to-exceed \$75,000.

**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section IV – Payment of Fees, Item G., is hereby amended to increase the total of all compensation and expenses paid to Bartel by \$27,755 to a not-to-exceed amount of Seventy Five Thousand Dollars (\$75,000).
2. All other terms and conditions remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment to Agreement No. 788 as provided below:

Date 9/25/13

**ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY**

By: [Signature]  
Chief Executive Officer

**BARTEL ASSOCIATES, LLC**

Date 9/25/13

By: [Signature]  
John E. Bartel President  
(Print/Type Name and Title)

**APPROVED AS TO FORM:**

City Attorney – Michael N. Feuer

By: [Signature]

Date: 9/20/13

**SIXTH AMENDMENT TO AGREEMENT NO. 788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES LLC**

**THIS AMENDMENT NO. 6** to Agreement No. 788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 for a term of one year, until June 30, 2008 with an option for ACTA to extend the term for up to an additional two years; and

**WHEREAS**, from 2008 through 2013 five amendments were issued to allow for allocations of additional funds and extensions of time; and

**WHEREAS**, at its June 9, 2016 meeting, ACTA's Governing Board approved extending the term for two years and increasing the total not-to-exceed amount for all compensation and expenses in the amount of \$20,000; and

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

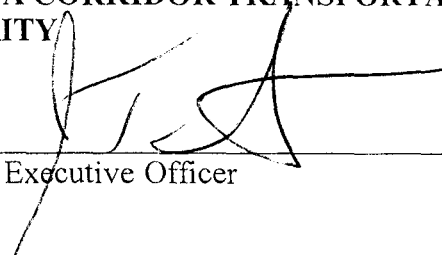
1. Section II – Term of Agreement, is hereby amended to extend the term two years, from June 30, 2016 to June 30, 2018.
2. Section IV – Payment of Fees, Item G, is hereby amended to increase the total compensation and expenses by \$20,000 from \$75,000 for a total not-to-exceed contract value of \$95,000.
3. Except as amended herein, all remaining terms and conditions of the Agreement remain in full force and effect.
4. The effective date of this amendment shall be the date of its execution by ACTA's Chief Executive Officer.

Amendment No. 6  
Agreement No. C0788  
BARTEL ASSOCIATES, LLC

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amendment to Agreement No. 788 as provided below:

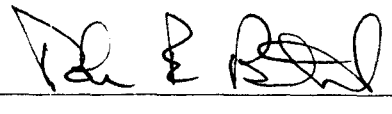
ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY

Date 7/6/16

By:   
Chief Executive Officer

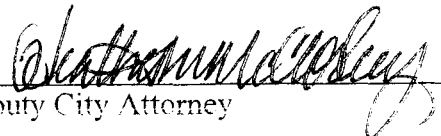
BARTEL ASSOCIATES, LLC

Date June 22, 2016

By:   
John E. Bartel, President  
(Print/Type Name and Title)

APPROVED AS TO FORM:

Michael N. Feuer, City of Los Angeles City Attorney

By:   
Deputy City Attorney

Date: July 5, 2016

**SEVENTH AMENDMENT TO AGREEMENT NO. C0788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES, LLC**

**THIS SEVENTH AMENDMENT** to Agreement No. C0788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates, LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 until June 30, 2008; and

**WHEREAS**, six amendments were subsequently issued increasing the amount of consideration and extending the term of the contract; and

**WHEREAS**, Bartel provides required actuarial services to ACTA each fiscal year; and

**WHEREAS**, at its June 14, 2018 meeting, ACTA's Governing Board approved an extension of the term of Agreement No. C0788 by one year, from July 1, 2018 through June 30, 2019, and increased the compensation amount by \$10,000 for a not-to-exceed amount of One Hundred Five Thousand Dollars (\$105,000).

**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section II – Term of Agreement, is hereby amended extending the term three years from July 1, 2018 to June 30, 2019.
2. Section IV – Payment of Fees, Item G., is hereby amended to increase the total compensation and expenses by \$10,000, from \$95,000 to a new not-to-exceed contract value of \$105,000.
3. Except as amended herein, all remaining terms and conditions of Agreement No. C0788, remain in full force and effect.
4. The effective date of this amendment shall be the date of its execution by ACTA's Chief Executive Officer or Chief Financial Officer.

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Amendment No. 7  
Agreement No. C0788  
BARTEL ASSOCIATES, LLC

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Agreement No. C0788 as provided below:

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date 6/29/18 By [Signature]  
Title CEO

ATTEST

Date 6/29/18 By [Signature]  
Title Board Secretary

BARTEL ASSOCIATES, LLC

Date June 25, 2018 By [Signature]  
John E. Bartel, President  
(Print/Type Name & Title)

ATTEST

Date June 26, 2018 By [Signature]  
Title Mary Elizabeth Redding,  
Vice president

APPROVED AS TO FORM

Michael N. Feuer, City of Los Angeles City Attorney

By: [Signature]  
Deputy City Attorney

Date: June 28, 2018

MAY 17 2019

**EIGHTH AMENDMENT TO AGREEMENT NO. C0788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES, LLC**

**THIS EIGHTH AMENDMENT** to Agreement No. C0788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates, LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 until June 30, 2008; and

**WHEREAS**, seven amendments were subsequently issued increasing the amount of consideration and extending the term of the contract; and

**WHEREAS**, Bartel provides required actuarial services to ACTA each fiscal year; and

**WHEREAS**, at its March 14, 2019 meeting, ACTA's Governing Board approved an extension of the term of Agreement No. C0788 by six months, from July 1, 2019 through December 31, 2019.

**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section II – Term of Agreement, is hereby amended extending the term six months from July 1, 2019 to December 31, 2019.
2. Except as amended herein, all remaining terms and conditions of Agreement No. C0788, remain in full force and effect.
3. The effective date of this amendment shall be the date of its execution by ACTA's Chief Executive Officer or Chief Financial Officer.

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Amendment No. 8  
Agreement No. C0788  
BARTEL ASSOCIATES, LLC

IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment to Agreement No. C0788 as provided below:

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date 4/9/19

By [Signature]

Title CEO

ATTEST

Date 4/09/19

By Marie M. Melton

Title Board Secretary

BARTEL ASSOCIATES, LLC

Date 3/26/19

By [Signature]

John E. Bartel

(Print/Type Name & Title)

ATTEST

Date 3,26,19

By [Signature]

Title Doug Pryor, Vice President

APPROVED AS TO FORM

Michael N. Feuer, City of Los Angeles City Attorney

By: [Signature]  
Deputy City Attorney

Date: April 8, 2019



**NINTH AMENDMENT TO AGREEMENT NO. C0788 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND BARTEL ASSOCIATES, LLC**

**THIS NINTH AMENDMENT** to Agreement No. C0788 is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")**, and **Bartel Associates, LLC ("Bartel")**.

**WHEREAS**, an Agreement between ACTA and Bartel was entered into commencing July 1, 2007 until June 30, 2008; and

**WHEREAS**, eight amendments were subsequently issued increasing the amount of consideration and extending the term of the contract; and

**WHEREAS**, Bartel provides required actuarial services to ACTA each fiscal year; and

**WHEREAS**, at its November 15, 2019 meeting, ACTA's Governing Board approved an extension of the term of Agreement No. C0788 by five years, from January 1, 2020 through December 31, 2024, the addition of \$75,000 to the contract value and the amendment of the hourly rates.

**NOW, THEREFORE**, in consideration of the premises and the terms, covenants and conditions hereinafter provided, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section II – Term of Agreement, is hereby amended extending the term five years from January 1, 2020 to December 31, 2024.
2. Section IV – Payment of Fees, Item G, is hereby amended to increase the total of the compensation and expenses paid to Bartel by \$75,000 to a not-to-exceed amount of \$180,000.
3. Appendix A – Fees, is hereby amended to replace the Hourly Rates with the attached schedule.
4. Except as amended herein, all remaining terms and conditions of Agreement No. C0788, remain in full force and effect.
5. The effective date of this amendment shall be the date of its execution by ACTA's Chief Executive Officer or Chief Financial Officer.

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IN WITNESS WHEREOF, the parties hereto have executed this Ninth Amendment to Agreement No. C0788 as provided below:

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date 12/2/19

By [Signature]  
Title CEO

ATTEST

Date 12/02/19

By Maria M. Mulea  
Title Board Secretary

BARTEL ASSOCIATES, LLC

Date November 21, 2019

By Doug Pryor  
Doug Pryor Vice President & Secretary  
(Print/Type Name & Title)

ATTEST

Date November 21, 2019

By Mary Elizabeth Redding  
Title Mary Elizabeth Redding, Vice President & Treasurer

APPROVED AS TO FORM

Michael N. Feuer, City of Los Angeles City Attorney

By: [Signature]  
Deputy City Attorney

Date: November 26, 2019

**Appendix A – Fees**  
**Hourly Rates**

Team Member	Hourly Rate
Partner & President	\$335.00
Partner, VP	\$285.00
Assistant Vice President	\$250.00
Associate Actuary	\$200.00
Senior Actuarial Analyst	\$180.00
Actuarial Analyst	\$150.00
Administrative Support	\$90.00

Note: An annual percentage increase of 3% shall be applied to the hourly rates set forth herein, effective January 1 of each year, beginning on January 1, 2021.

# **Exhibit C**

**Notice Letter  
From  
Foster & Foster**

July 28, 2022

**Via Electronic Mail**

Nicholas Hour  
Administrative Manager  
Alameda Corridor Transportation Authority  
3760 Kilroy Airport Way, Suite 200  
Long Beach, CA 90806

**Re: Notification of Acquisition --- Bartel Associates, LLC and Foster & Foster Consulting Actuaries, Inc.**

Dear Mr. Hour,

Please allow this letter to serve as official notification that Foster & Foster Consulting Actuaries, Inc. ("Foster & Foster") has acquired Bartel Associates, LLC ("Bartel") effective July 1, 2022. If you have any further questions on this transaction or require any additional information please feel free to contact me directly.

Thank you and we look forward to working together for many years to come.

Very truly yours,



---

Jonathan R. Davidson,  
Chief Legal Officer

T. 215.681.2319  
E. [jonathan.davidson@foster-foster.com](mailto:jonathan.davidson@foster-foster.com)

c: Doug Pryor, Foster & Foster


# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: February 24, 2023

From: Michael C. Leue, Chief Executive Officer 

Subject: APPROVE First Amendment to Agreement C0889 with Pacific Railway Enterprises, Inc. to increase the total compensation amount by \$125,000 for an agreement total not to exceed amount of \$375,000 for the continuation of Signal Design Services

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### **Recommendation:**

Approve the First Amendment to Agreement No. C0889 with Pacific Railway Enterprises, Inc. (PRE), for additional compensation in the amount of \$125,000 for continuation of signal design services and authorize the Chief Executive Officer or his designee to execute the amendment.

The First Amendment increases the agreement compensation by \$125,000 to a total not-to-exceed amount of \$375,000. Of the total agreement amount, \$258,220.68 is to be reimbursed by the Union Pacific Railroad for costs associated with the Dolores Yard Crossover Project. The remainder of the Agreement amount will fund signal design services for other ACTA projects.

### **Discussion:**

The ACTA Governing Board approved execution of agreement C0889 with PRE on November 15, 2019. The Governing Board also approved a reimbursement agreement M0899 with Union Pacific Railroad (UPRR) on June 16, 2022. The reimbursement agreement included estimated costs for PRE to perform final design services in the amount of \$133,220.68 for the Dolores Yard Crossover Project railroad signal system.

The initial funding amount for agreement C0889 was sufficient to cover the original Dolores Yard Crossover Project design costs. Since that time, UPRR has made modifications to various Project components. On February 02, 2023, the Governing Board approved the First Amendment to Agreement M0899 to increase the funding amount by \$592,000. Of this increase, PRE's signal design services funding increased by \$98,000 and with a contingency amount added, the total funding increase was \$125,000. This increase exceeds the original approved amount of agreement C0889. Increasing the agreement compensation by \$125,000 to a new total of \$375,000 will cover the costs for the UPRR project and keep original funds available for other signal design work that is anticipated in the future.

### **Budget Impact:**

There is no impact to the FY23 Budget for the additional work, which is fully reimbursable. These are pass-through costs that ACTA is initially required to pay, but which are subsequently fully reimbursed by the entity requesting the services. ACTA utilizes the Local Agency Investment Fund (LAIF) account to pay for the services and reimburses the account when payment is received.

**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. C0889 between the Alameda Corridor Transportation Authority and Pacific Railway Enterprises, Inc.

FIRST AMENDMENT  
TO AGREEMENT NO. C0889  
BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND PACIFIC RAILWAY ENTERPRISES, INC.

THIS FIRST AMENDMENT to Agreement No. C0889 is made and entered into by the Alameda Corridor Transportation Authority ("ACTA"), acting by and through its Governing Board, and Pacific Railway Enterprises, Inc. ("Consultant") as follows:

1. Article 5. Compensation is hereby removed and replaced in its entirety, as follows:

"For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant, and Consultant shall accept, a sum not to exceed Three Hundred Seventy-Five Thousand Dollars (\$375,000). The total sum payable under this Agreement shall be determined by Project Directives and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein."

Except as amended herein, all remaining terms and conditions of Agreement No. C0889 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.

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IN WITNESS THEREOF, the parties hereto have executed this First Amendment to Agreement No. C0889 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

PACIFIC RAILWAY ENTERPRISES,  
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

# M E M O

## *Alameda Corridor Transportation Authority*

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To:	Governing Board
Meeting Date:	February 24, 2023
From:	Michael C. Leue, Chief Executive Officer 
Subject:	APPROVE Contract Task Order No. 7, Revision 1 to Agreement C0855 with RailWorks Track Services, LLC to increase the agreement compensation by \$494,000 for a total compensation amount of \$1,365,354 for construction services in connection with the Union Pacific Dolores Yard Crossover Project

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**Recommendation:**

Approve Contract Task Order No. 7, Revision 1 under Agreement No. C0885 with RailWorks Track Services, LLC (RailWorks), in the amount of \$494,000 for additional construction services on the UP Dolores Yard Crossover Project and authorize the Chief Executive Officer or his designee to execute the CTO.

**Discussion:**

Union Pacific Railroad (UP) is constructing the Dolores Yard Crossover Project in accordance with a Memorandum Of Agreement approved by ACTA Governing Board on November 15, 2021, and Reimbursement Agreement M0899 with the UP approved by ACTA Governing Board on June 16, 2022.

The UP made modifications to project components related to the railroad signal system since CTO7 was issued on July 21, 2022. The construction costs related to these modifications increase the services needed by RailWorks in the amount of \$494,000. The First Amendment to Agreement M0899 covering reimbursement from UP was approved by ACTA Governing Board on February 2, 2023.

Staff recommends approval of Contract Task Order No. 7, Revision 1 under Agreement No. C0885 with RailWorks, to complete the necessary services and receive payment from ACTA for the Project work with added costs in the amount of \$494,000 for a total compensation amount of \$1,365,354 for construction services on the UP Dolores Yard Crossover Project. UP will reimburse ACTA for all costs incurred under Agreement M0899, including those services under C0885-CTO No. 7.

**Budget Impact:**

There is no impact to the FY23 Budget for the additional work, which is fully reimbursable by UP. These are pass-through costs that ACTA is initially required to pay, but which are subsequently fully reimbursed by the entity requesting the services. ACTA utilizes the Local Agency Investment Fund (LAIF) account to pay for the services and reimburses the account when payment is received.

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed this board report and the proposed Contract Task Order and there are no legal issues at this time.

**Transmittals:**

Transmittal 1 – Contract C0885 Task Order No. 7, Revision 1

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**  
**AGREEMENT NO. 885**  
**Maintenance Agreement (Rail Corridor and Non-Rail Components)**

**RAILWORKS TRACK SERVICES, LLC**

**Contract Task Order No. 7, Rev. 1**

Task Order Description: **Dolores Yard Crossover Installation between MP 15.56 and MP 15.95**

Task Order Amount: **\$494,000.00**

Effective Date: **February 24, 2023**

Pursuant to ACTA Agreement No. 885, the terms and conditions of which are incorporated herein, Consultant is hereby authorized to proceed as directed with the work described in this Contract Task Order, as further defined in Exhibit A – Contract Task Order 7, Rev. 1 - Scope of Work, which is attached hereto and by this reference made a part hereof. This work is a pass-through item which will be fully reimbursed by Union Pacific Railroad.

The work defined in this Contract Task Order shall be paid in accordance with the Compensation provisions of the agreement in a total amount not-to-exceed One Million Three Hundred Sixty-Five Thousand Three Hundred Fifty-Four Dollars (\$1,365,354.00) as defined in Exhibit B and summarized below:

Original Task Order No. 7	\$ 871,354.00
Revision No. 1	\$ 494,000.00
<b>Total Not-to-Exceed</b>	<b>\$ 1,365,354.00</b>

Except as provided herein all terms and conditions of the Agreement remain unchanged. The terms and conditions of this Contract Task Order revision constitute full accord and satisfaction for all cost and time of performance related to the work described or referenced herein.

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**

**CONSULTANT: RailWorks Track Services, LLC.**

Signature:

Signature:

Name/Title: Michael Leue, P.E. Chief Executive Officer

Name/Title:

Date Executed:

Date Accepted:

- ☐ This is an M&O reimbursable cost to the railroads.
- ☐ This is **NOT** an M&O reimbursable cost to the railroads.
- ☒ This is not M&O related work. (*Union Pacific Railroad to reimburse for costs incurred by ACTA*)

***EXHIBIT A – ACTA AGREEMENT 885***

***RAILWORKS TRACK SERVICES, LLC. – Task Order 7, Rev. 1***

***SCOPE OF WORK***

**Description of Services:**

Contractor shall provide all additional supervisory, labor, supplies, and equipment to remove/eliminate two existing bungalows (CP Thenard “C” House and Watson Crossing House) and installing a new bungalow with all needed equipment for crossing and wayside as approved and based on recommendations by the Union Pacific Railroad Signal Department. The modifications to components related to the railroad signal system were made by the UPRR after the original CTO was issued to RailWorks.

***EXHIBIT B – ACTA AGREEMENT 885***

***RAILWORKS TRACK SERVICES, LLC. – Task Order 7 Rev. 1***

***PRICING DETAILS***

Railworks Track Services, LLC  
Dolores Yard Cross Crossover Project  
8/23/2022

Railworks estimate for assisting Highball Signals with Relocating and Installing New Signal Bungalow at Watson Crossing.

Cost Code	Description					
	CTO - UPRR Watson Road Connection	U of M	QTY	Rate	Split	Total
	Assist Highball Signal with Relocation and Installation of Signal Bungalow					
	Operator - ST	Hour	80	\$ 115.94	100%	\$ 9,275.20
	Operator - OT	Hour	20	\$ 173.91	100%	\$ 3,478.20
					TOTAL:	\$12,753.40

Cost  
Code

Description

CTO - UPRR Watson Road Connection	U of M	QTY	Rate	Split	Total	
Materials						
ALL materials by UPRR						
Install New CP Thenard and Watson Crossing House						
Signal Engineer	Hour	80	\$ 125.00	100%	\$ 10,000.00	2 Weeks - 6 Men 80 ST 20 OT Each
Signal Test Maintainer	Hour	80	\$ 111.00	100%	\$ 8,880.00	
Signal Maintainer	Hour	320	\$ 109.00	100%	\$ 34,880.00	
Signal Engineer OT	Hour	20	\$185	100%	\$ 3,700.00	
Signal Test Maintainer OT	Hour	20	\$164	100%	\$ 3,280.00	
Signal Maintainer OT	Hour	80	\$ 161.00	100%	\$ 12,880.00	
Replace/Dig in New Signal Cable to Watson crossing and CP Thenard.						
Signal Engineer	Hour	160	\$ 125.00	100%	\$ 20,000.00	4 Weeks - 6 Men 160 ST 80 OT Each Recable All While Keeping Signals in Service.
Signal Test Maintainer	Hour	160	\$ 111.00	100%	\$ 17,760.00	
Signal Maintainer	Hour	640	\$ 109.00	100%	\$ 69,760.00	
Signal Engineer OT	Hour	80	\$ 185.00	100%	\$ 14,800.00	
Signal Test Maintainer OT	Hour	80	\$ 164.00	100%	\$ 13,120.00	
Signal Maintainer OT	Hour	320	\$ 161.00	100%	\$ 51,520.00	
Terminate New Signal Cable at CP Thenard and Watson Crossing						
			\$ -			
Signal Engineer	Hour	80	\$ 125.00	100%	\$ 10,000.00	2 Weeks - 6 Men 80 ST 20 OT Each
Signal Test Maintainer	Hour	80	\$ 111.00	100%	\$ 8,880.00	
Signal Maintainer	Hour	480	\$ 109.00	100%	\$ 47,078.40	
Signal Engineer OT	Hour	20	\$ 185.00	100%	\$ 3,700.00	
Signal Test Maintainer OT	Hour	100	\$ 164.00	100%	\$ 16,400.00	
Signal Test Maintainer OT	Hour	20	\$ 161.00	100%	\$ 3,220.00	
Factory Test Signal Bungalow and Software.						
Signal Engineer	Hour	120	\$ 125.00	100%	\$ 15,000.00	3 Weeks - 3 Men 120 ST 60 OT Each
Signal Test Maintainer	Hour	120	\$ 111.00	100%	\$ 13,320.00	
Signal Maintainer	Hour	120	\$ 109.00	100%	\$ 13,080.00	
Signal Engineer OT	Hour	60	\$ 185.00	100%	\$ 11,100.00	
Signal Test and Maintainer OT	Hour	120	\$ 161.00	100%	\$ 19,320.00	
Travel Expense (Flight, Room, Rental Vehicle and Meals)	\$5,000	1	\$ 5,000.00	100%	\$ 5,000.00	
Install and wire New Switch						
			\$ -			
Signal Engineer	Hour	40	\$ 125.00	100%	\$ 5,000.00	1 Week 6 men - 40 ST 10 OT Each
Signal Test Maintainer	Hour	40	\$ 111.00	100%	\$ 4,440.00	
Signal Maintainer	Hour	120	\$ 109.00	100%	\$ 13,080.00	
Signal Engineer OT	Hour	10	\$ 185.00	100%	\$ 1,850.00	
Signal Test Maintainer OT	Hour	10	\$ 164.00	100%	\$ 1,640.00	
Signal Maintainer OT	Hour	80	\$ 161.00	100%	\$ 12,880.00	
Cad Weld all new track wires						
Signal Engineer	Hour	40	\$ 125.00	100%	\$ 5,000.00	1 Week - 6 men 40 ST 20 OT Each
Signal Test Maintainer	Hour	40	\$ 111.00	100%	\$ 4,440.00	
Signal Maintainer	Hour	120	\$ 109.00	100%	\$ 13,080.00	
Signal Engineer OT	Hour	20	\$ 185.00	100%	\$ 3,700.00	
Signal Test Maintainer OT	Hour	20	\$ 164.00	100%	\$ 3,280.00	
Signal Maintainer OT	Hour	60	\$ 161.00	100%	\$ 9,660.00	
Insall and field pre test new software at CP Long Beach, Sepulveda and BNSF Junction						
			\$ -			
Signal Engineer	Hour	80	\$ 125.00	100%	\$ 10,000.00	2 Weeks - 6 Men 80 ST 40 OT Each
Signal Test Maintainer	Hour	80	\$ 111.00	100%	\$ 8,880.00	
Signal Maintainer	Hour	320	\$ 109.00	100%	\$ 34,880.00	
Signal Engineer OT	Hour	40	\$ 185.00	100%	\$ 7,400.00	
Signal Test Maintainer OT	Hour	40	\$ 164.00	100%	\$ 6,560.00	
Signal Maintainer OT	Hour	160	\$ 161.00	100%	\$ 25,760.00	
Install New Signal Equipment at CP Long Beach and Sepulveda						
Signal Engineer	Hour	80	\$ 125.00	100%	\$ 10,000.00	3 Weeks - 6 Men 120 ST 60 OT Each
Signal Test Maintainer	Hour	80	\$ 111.00	100%	\$ 8,880.00	
Signal Maintainer	Hour	320	\$ 109.00	100%	\$ 34,880.00	
Signal Engineer OT	Hour	60	\$ 185.00	100%	\$ 11,100.00	
Signal Test Maintainer OT	Hour	60	\$ 164.00	100%	\$ 9,840.00	
Signal Maintainer OT	Hour	240	\$ 161.00	100%	\$ 38,640.00	
Test and Commision CP Long Beach, CP Thenard, CP BNSF Junction and CP Sepulveda						
			\$ -			
Signal Engineer	Hour	80	\$ 125.00	100%	\$ 10,000.00	2 Weeks - 12 Men 80 ST 40 OT Each
Signal Test Maintainer	Hour	80	\$ 111.00	100%	\$ 8,880.00	
Signal Maintainer	Hour	800	\$ 109.00	100%	\$ 87,200.00	
Signal Engineer OT	Hour	40	\$ 185.00	100%	\$ 7,400.00	
Signal Test Maintainer OT	Hour	40	\$ 164.00	100%	\$ 6,560.00	
Signal Maintainer OT	Hour	400	\$ 161.00	100%	\$ 64,400.00	
Material Subtotal					\$ -	
Labor & Equipment Subtotal					\$ 895,988.40	
					SUBTOTAL: \$ 895,988.40	
Subcontract					5% Markup \$ 44,799.42	
					\$ 940,787.82	




# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: February 24, 2023

From: Michael C. Leue, Chief Executive Officer 

Subject: APPROVE Reimbursement Agreement with the City of Long Beach Harbor Department for a not to exceed amount of \$201,250 and a one-year term for ACTA to provide various support services in connection with the Pier B On-Dock Rail Support Facility Project

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### **Recommendation:**

Approve a Reimbursement Agreement with the City of Long Beach Harbor Department (POLB) to cover ACTA expenditures for legal, environmental review, engineering and flagging services associated with POLB's Pier B On-Dock Rail Support Facility (Pier B Project) and authorize the Chief Executive Officer or his designee to execute the Agreement.

### **Discussion:**

The Pier B Project is a rail yard located in POLB North Harbor that will provide five 10,000-foot arrival/departure tracks, 90,000 feet of staging tracks, locomotive facility, in addition to the two existing mainlines, which together will significantly boost the productivity of on-dock rail yards. The portions of the Pier B Project west of Anaheim Street are proposed to be on jointly owned port property allocated to ACTA by the Use Permit to manage and operate the rail corridor. The influences of the Pier B Project on ACTA's operations will require certain approvals by the ACTA Governing Board, including amendments to the UOA and Use Permit. In order to approve these amendments, ACTA will need to review the EIR certified by POLB and make its own findings pursuant to CEQA.

The Pier B Project will require several efforts by ACTA, as follows:

- Amend the Use & Operating Agreement (UOA) where the Pier B Project is within ACTA's operational jurisdiction as defined by the UOA;

- Amend the Use Permit to include legal descriptions, comprehensive property maps and other updates;

- In order to approve certain portions of the Pier B project within ACTA's jurisdiction, ACTA is obligated to conduct an independent review of the Pier B Project Environmental Impact Report (EIR) and make findings as necessary to undertake such actions;

- Amending the UOA will require approval by Parties to the UOA for which ACTA will need to provide engineering analyses and exhibits to communicate benefits and issues;

- Review design submittals provided by POLB to ensure conformance with ACTA design standards and that there are no bottlenecks created that will hinder efficient rail operations;

- ACTA's maintenance contractor will be required to perform flagging services to enable safe working conditions for POLB and their consultants when they are within 25 feet of ACTA's railroad tracks.

ACTA is requesting that POLB enter into this Agreement in order to enable ACTA to provide support services for the Pier B Project, with all associated ACTA costs to be reimbursed by POLB. Agreement C0905 is provided in Transmittal 1.

**Budget Impact:**

There will be no net impact to the ACTA Program Budget because ACTA costs will be fully reimbursed by POLB. ACTA will pay its costs up-front for the services, utilizing the Local Agency Investment Fund (LAIF) account to pay for the services. The LAIF account will be refunded using the reimbursements from POLB.

**Co-General Counsel Review:**

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

**Transmittals:**

Transmittal 1 – Agreement No. 905 with the City of Long Beach, acting by and through its Board of Harbor Commissioners, for the Reimbursement of Expenditures by ACTA in Support of POLB's Pier B On-Dock Rail Support Facility

AGREEMENT NO. 905

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, plus a fifteen percent (15%) Administrative Overhead charge.

2. The total estimated budget for ACTA's Work as set forth in Exhibit A is One Hundred Sixty-one Thousand Dollars (\$161,000). Any increase in the estimated budget for ACTA's Work 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 budget or schedule of ACTA's Work. Any revised cost estimates exceeding 10% of the then current 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 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.

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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 \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

## Exhibit A

Pier B Project Pre-construction Support by ACTA  
Period from January 1, 2023 through December 31, 2023

Scope of Work	Budget	
Flagging	\$	30,000
Legal CEQA Opinions	\$	5,000
CEQA Review	\$	45,000
ACTA Design Review	\$	30,000
UOA Amendment/Side Agreements	\$	30,000
Administrative Overhead (15%)	\$	21,000
<b>Total</b>	<b>\$</b>	<b>161,000</b>




# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: February 24, 2023

From: Michael C. Leue, Chief Executive Officer 

Subject: APPROVE Agreement with Dudek for a not to exceed amount of \$50,000 and a one year term to provide CEQA Consulting Services for the Port of Long Beach Pier B On-Dock Rail Support Facility Environmental Impact Report

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### **Recommendation:**

Approve the Agreement with Dudek in the amount of \$50,000 and a one-year term for CEQA Consulting services to review the Port of Long Beach (POLB) Pier B On-Dock Rail Support Facility Project (Pier B Project) Environmental Impact Report (EIR) and authorize the Chief Executive Officer or his designee to execute the agreement.

### **Discussion:**

The Pier B Project is a rail yard located in POLB North Harbor that will provide five 10,000-foot arrival/departure tracks, 90,000 feet of staging tracks, locomotive facility, in addition to the two existing mainlines, which together will significantly boost the productivity of on-dock rail yards. The portions of the Pier B Project west of Anaheim Street are proposed to be on jointly owned port property allocated to ACTA by the Use Permit to manage and operate the rail corridor. The influences of the Pier B Project on ACTA's operations will require certain approvals by the ACTA Governing Board, including amendments to the UOA and Use Permit. In order to approve these amendments, ACTA will need to review the EIR certified by POLB and make its own findings pursuant to CEQA.

In selecting Dudek, ACTA initially performed outreach to seven environmental firms when we determined that services would be needed; ACTA's direct outreach went to firms in the City of Los Angeles Harbor Department's on-call CEQA Consultant pool. ACTA received two proposals from this outreach and is recommending Dudek for the proposed services. Dudek's proposal provided an on-point and efficient work plan, with a lower budget when compared to the other firm's proposal.

The proposed Agreement is provided in Transmittal 1. The Agreement has a budget of \$50,000 which includes an approximate amount of 15% for contingency services. The estimated schedule to perform the proposed services is three months, however ACTA recommends a one-year contract to allow for scheduling modifications and follow-up on-call services.

Staff recommends that the Board approve the agreement with Dudek to perform CEQA consulting services for the Pier B Project and authorize the CEO to execute the agreement.

**Budget Impact:**

There will be no net impact to the ACTA Program Budget because ACTA costs will be fully reimbursed by POLB. ACTA will pay its costs up-front for the services, utilizing the Local Agency Investment Fund (LAIF) account to pay for the services. The LAIF account will be refunded using the reimbursements from POLB.

**Co-General Counsel Review:**

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

**Transmittals:**

Transmittal 1 – Agreement No. 906 with Dudek to perform CEQA Consulting Services.

AGREEMENT NO. 906

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
DUDEK

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 DUDEK, a California corporation, whose address is 38 North Marengo Avenue, Pasadena, California 91101 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist ACTA in reviewing and evaluating the Port of Long Beach Pier B On-Dock Rail Support Facility Project Environmental Impact Report so that ACTA may approve certain actions in support of the Pier B Project ("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 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, Matt Valerio ("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 project 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. One (1) year 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

## 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 therefore. 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.

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

#### (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) Professional Liability Insurance

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

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

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. 906, 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.

(f) Limits of Coverage

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

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 ACTA.

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

DUDECK

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 and Schedule**

Dudek shall review and evaluate the Port of Long Beach Pier B On-Dock Rail Support Facility Project Environmental Impact Report Evaluation to assist ACTA's staff and Governing Board to take certain actions in support of the Pier B Project.

Detailed below are the key staff who will work on the Project, a Scope of Work and schedule for the peer review process and preparation of California Environmental Quality Act (CEQA) Findings for ACTA to support any action related to the proposed project.

### **KEY ASSIGNED STAFF**

*Matt Valerio, CEQA Project Manager* – Over 20 years' experience preparing and reviewing CEQA and NEPA documents both as a consultant and as an agency staff person (Port of San Diego).

*Laura Masterson, Sr. CEQA Analyst* – Over 10 years' experience preparing and reviewing CEQA and NEPA documents as both a consultant and agency staff person (Port of Los Angeles).

*Adam Poll, Air Quality Specialist* - over 15 years of experience in the Harbor complex and SCAQMD evaluating air emissions, criteria pollutants, health risks, greenhouse gas emissions and energy efficiency.

In addition to the key staff listed above, Dudek has the full suite of environmental experts inhouse, including the following relevant areas of expertise: cultural resource specialists, biologists, hydrology and water quality specialists, hazards and hazardous materials specialists, noise specialists, land use specialists, and transportation specialists.

### **WORK PLAN**

Dudek's approach or Work Plan for this scope of services is to undertake a careful review of the Pier B EIR, appendices, and any incorporated materials and provide a review memorandum as to our findings of adequacy or further inquiry. At the same time as developing the memorandum Dudek will prepare CEQA Findings for ACTA. As the EIR has been certified and relied upon by other agencies Dudek assumes that no substantial inadequacies will be discovered, in the event such inadequacies are identified and or additional evaluation is necessary to close enquiries raised during our review, Dudek would negotiate additional scope and fee with ACTA.

### **SCOPE OF SERVICES**

#### **TASK 1 – PIER B EIR REVIEW**

##### **1.a - Draft Peer Review Comments Memorandum**

Dudek will review the Pier B EIR and associated materials (appendices, POLB CEQA Findings, EIS and public comments) for adequacy under CEQA. Dudek senior CEQA staff will carefully review the EIR and

associated materials and prepare a brief memorandum that outlines our conclusions, specifically what we consider adequate and whether any further inquiries would be prudent to promote adequacy. Dudek will also include senior air quality experts review of the EIR and air quality, health risk and greenhouse gas emissions modelling parameters and conclusions (no re-run of modelling or calculations would be performed under this scope of work) to determine if adequate for CEQA purposes. In addition, if our senior CEQA staff identify technical queries as part of the review our technical experts in areas such as hydrology, water quality, hazards and hazardous materials, transportation, or others as necessary will be engaged as part of this task in a very focused manner to help address any technical uncertainty should it arise.

#### **1.b - Final Peer Review Comments Memorandum**

Dudek will make any revisions to the memorandum based on feedback and discussions with ACTA. Dudek will finalize the memorandum and submit to ACTA for use in their decision and files.

##### **Task 1 Deliverables**

- Draft Memorandum
- Final Memorandum

### **TASK 2 – CEQA FINDINGS**

#### **2.a - Draft CEQA Findings**

Dudek will prepare a draft of the CEQA Findings and a Statement of Overriding Considerations (Air Quality and Greenhouse Gas emissions as applicable) for ACTA to certify the Pier B EIR. Dudek assumes that ACTA will prepare and file the Notice of Determination (NOD).

#### **2.b - Final CEQA Findings**

Dudek will make any revisions to the CEQA Findings based on feedback and discussions with ACTA. Dudek will submit the CEQA Findings to ACTA for use in their decision and files.

##### **Task 2 Assumptions**

- No additional analysis.
- One round of ACTA review

##### **Task 2 Deliverables**

- Draft CEQA Findings
- Final CEQA Findings

### **TASK 3 – PROJECT MANAGEMENT AND MEETINGS**

Dudek will attend one project kick-off meeting with representatives from ACTA staff virtually (via Zoom/Teams/other). The purpose of the kick-off meeting is to initiate the review, understand any concerns from ACTA, ensure Dudek has all the intended materials for review (EIR and prior ACTA CEQA Findings examples) and agree on the target dates for submittals to ACTA and feedback back to Dudek. The meeting will also establish early communication among project team members, as well as the protocols for ongoing communication. We anticipate 1 virtual meeting a month (up to 3 meetings including the kickoff) to discuss

**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

progress, review inquiries, and CEQA Findings considerations. Dudek's Project Manager will also be available to attend an ACTA Governing Board meeting for adoption of the EIR and CEQA Findings.

Dudek's Project Manager will also maintain the schedule, provide progress updates, invoices and coordinate materials exchanges.

### **Task 3 Assumptions**

- No more than 3 virtual meetings and 1 hearing.
- 2–3-month duration

### **Task 3 Deliverables**

- Attend one (1) kick-off meeting
- Attend two (2) further project meetings
- Schedule
- Invoicing and progress reports
- Materials exchange platform (Sharefile, or other)

## **SCHEDULE**

Approximately 2-3-months will be needed for completion of the Pier B EIR review and CEQA Findings. The schedule is dependent on ACTA resources, timing of the Notice To Proceed, and assumes no inadequacies or inquiries are identified that warrant additional evaluation.



## 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

## RATES AND COST ESTIMATE

Billing Category	Project Director	Senior Specialist III	Senior Specialist II	Pubs Specialist II	Labor Hours	Labor @ Rates	Total
	\$262.65	\$231.75	\$216.30	\$103.00			
Task 1a Draft Peer Review Comments Memo	16	48	16	2	82	\$18,993.20	\$18,993.20
Task 1b Final Peer Review Comments Memo	4	10	3	1	18	\$4,120.00	\$4,120.00
Task 2a Draft CEQA Findings	12	28		3	43	\$9,949.80	\$9,949.80
Task 2b Final CEQA Findings	4	12		1	17	\$3,934.60	\$3,934.60
Task 3 Project Management and Meetings	12	12			24	\$5,932.80	\$5,932.80
Total Hours	48	110	19	7	184		
Total Billing	\$12,607.20	\$25,492.50	\$4,109.70	\$721.00		\$42,930.40	\$42,930.40

## 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 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:* SBE/VSBE/MBE/WBE/OBE/DVBE	Original Proposed SBE Percentage	Amount Paid This Month	Amount Paid to Date	Overall Contract Amount Percentage (Paid to Date)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

\* Indicate all certifications held by each subcontractor

## EXHIBIT D

### **SMALL BUSINESS ENTERPRISE PROGRAM**

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

An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this 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: \_\_\_\_\_