

## **REQUEST FOR PROPOSALS**

**Alameda Corridor**

**Emergency Response and Hazardous Waste Management Services**

**To be submitted to:**

**Alameda Corridor Transportation Authority**

**3760 Kilroy Airport Way, Suite 200**

**Long Beach, California 90806**

**Tuesday, February 14, 2023**

**Prospective Contractors:**

SUBJECT: REQUEST FOR PROPOSALS FOR EMERGENCY RESPONSE AND HAZARDOUS WASTE MANAGEMENT SERVICES

The Alameda Corridor Transportation Authority (“ACTA”) invites the submittal of proposals to provide services for emergency and non-emergency response in the handling of hazardous, non-hazardous, and regulated waste through full-service waste disposal companies for the transportation, treatment, storage recycling and disposal of waste.

The project shall commence after a contract is awarded by the ACTA Governing Board.

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

The schedule for this RFP will be as follows:

<b>Request for Proposals Published</b>	<b>February 14, 2023</b>
<b>Questions Due</b>	<b>February 21, 2023</b>
<b>Responses to Questions Posted</b>	<b>February 28, 2023</b>
<b>Proposals Due</b>	<b>March 14, 2023 by 3:00 p.m. PST</b>

For questions regarding this RFP, please email [hazmat-rfp@acta.org](mailto:hazmat-rfp@acta.org) by February 21, 2023. Responses to questions will be posted on ACTA’s website at <https://www.acta.org/newsroom/contract-opportunities/hazmat-services/> on February 28, 2023. It is the responsibility of proposers to review ACTA’s website for any RFP revisions or answers to questions prior to submitting a proposal to ensure their proposal is complete and responsive.

In addition to providing information requested in this RFP, there are additional administrative documents that must be submitted with the proposal. Please refer to Section 3 of the RFP for further information on required documentation. **In order for your proposal to be deemed responsive, the required documents MUST be included with your proposal. If your firm cannot agree to the requirements exactly as set forth in this RFP, please do not submit a proposal.**

Sincerely,

Michael Leue  
Chief Executive Officer

## Table of Contents

1. INTRODUCTION .....	4
1.1. Brief Overview of the Project .....	4
1.2. The Alameda Corridor Transportation Authority .....	4
2. PROJECT DESCRIPTION .....	5
2.1. Project Scope of Work .....	5
2.2. Required Equipment.....	6
2.3. General Requirements.....	7
2.4. Project Management.....	8
2.5. Project Deliverables.....	8
3. PROPOSAL REQUIREMENTS.....	8
3.1. Proposal Submission.....	8
3.2. Evaluation Process and Selection Criteria .....	9
3.3. Proposal Content .....	9

## ATTACHMENTS

- Attachment 1. Alameda Corridor Map
- Attachment 2. Scope of Work
- Attachment 3. RFP Selection Evaluation Form
- Attachment 4. Sample Agreement

## 1. INTRODUCTION

### 1.1. Brief Overview of the Project

The Alameda Corridor Transportation Authority (ACTA) is soliciting proposals from qualified Contractors to provide services for emergency and non-emergency response in the handling of hazardous, non-hazardous, and regulated waste through full-service waste disposal companies for the transportation, treatment, storage recycling and disposal of waste.

Firms may be selected to establish an on-call pool of qualified vendors to assist ACTA with emergency response and hazardous waste management services. ACTA intends to subsequently call on vendors from the established pool to be selected or bid on performing emergency response and hazardous waste management from ACTA right-of-way or adjacent properties. The duration of the contract awarded through this Request for Proposal (RFP) process is expected to be five years from the date of execution of the Agreement. A sample agreement is provided in Attachment 4.

An award under this RFP does not constitute a guarantee of any set amount of work to be assigned. Specific work assignments will be made on an as-needed basis and by a Contract Task Order (CTO) or Directive.

### 1.2. The Alameda Corridor Transportation Authority

The Alameda Corridor Transportation Authority (“ACTA”) was established on August 31, 1989, through a Joint Exercise of Powers Agreement (JPA) between the City of Long Beach and the City of Los Angeles. ACTA was created primarily for the purpose of developing, financing, constructing, and operating the Alameda Corridor.

In November 1995, the Alameda Corridor was designated by Congress as a Project of National Significance. This allowed ACTA to seek a federal loan as part of the funding package to build the \$2.4 billion project.

The Alameda Corridor is a 20-mile long, multiple-track rail system designed to link the rail facilities of Port of Los Angeles and Port of Long Beach with the transcontinental rail network of the Union Pacific Railroad Company (UP) and the BNSF Railway (BNSF), near downtown Los Angeles. The Corridor consolidated the freight rail traffic from four lines, 90 miles in length, onto a single fully grade-separated route. The Corridor operates 24-hours a day, 7-days a week. See Attachment 1.

The original Alameda Corridor Project was substantially complete in April 2002 when revenue operations on the Corridor began. ACTA is now focused on revenue collections from its two primary users, UP and BNSF, and repayment of the bonds which were issued in order to pay for the construction of the project. ACTA is also responsible for the maintenance-of-way activities on the Corridor.

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

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

## 2. PROJECT DESCRIPTION

### 2.1. Project Scope of Work

The Alameda Corridor Emergency Response and Hazardous Waste Management program responds to both emergency and non-emergency chemical spills, releases of regulated and/or hazardous materials, and abandoned wastes within the Alameda Corridor. The requests for emergency response and hazardous waste management services come to ACTA from the Railroads, and State and Federal agencies, including the United States Coast Guard (USCG), United States Environmental Protection Agency (USEPA), California Department of Fish and Wildlife (CDFW), and the Regional Water Quality Control Board (RWQCB).

The Alameda Corridor requires the services of qualified Contractors to support and perform all phases of waste management on land, on or adjacent to railroad tracks and in the water. These include the containment of spills, cleanup of releases, or abandoned waste on an as-needed basis in the following categories:

#### A. Emergency Response

Emergency Response is the ability to respond to a spill or uncontrolled release of a hazardous or regulated material on an emergency basis at any time, 24 hours per day, 7 days per week (including holidays), and provide containment and cleanup as required by local, state and federal regulatory agencies, and as directed by ACTA. The Contractor shall have the ability to arrive on-scene within 30 to 45 minutes of notification. These spills may involve containment and cleanup operations in storm drains, pipelines, groundwater, and in other water bodies, including navigable waters such as the ocean, harbors, lakes, reservoirs, streams, canals and rivers.

#### B. Unidentified Waste

Unidentified wastes are unlabeled containers with unknown substances deposited on property operated and maintained by ACTA that require removal.

1. Contractors shall have the ability to identify, package, and transport the unidentified wastes deposited on ACTA properties (including on railroad tracks) or right-of-way for recycling, treatment, or disposal.
2. Response to this waste stream will usually be required during normal working hours.

#### C. Waste Management

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

1. Response to this waste stream will usually be required during normal working hours.
2. Contractors shall be required to be on-site at a facility operated and maintained by ACTA at a mutually agreed-upon time with an authorized ACTA representative.
3. Waste management services may include, but are not limited to:

- a. Removing and excavating contaminated soils and debris;
  - b. Laboratory packing of chemicals;
  - c. Packaging and consolidating hazardous materials;
  - d. Identifying and packaging unidentified materials;
  - e. Characterizing and profiling of waste prior to disposal; and
  - f. Transporting waste for disposal.
4. For the purpose of this RFP, regulated and/or hazardous materials include, but are not limited to:
- a. Asbestos, crude oil and petroleum products, including fuel oil, mineral oil, gasoline, diesel;
  - b. Corrosive liquids, including acid, and alkaline solutions;
  - c. Polychlorinated Biphenyls (PCBs) and PCB-contaminated materials;
  - d. Mercury, lead, and other metals;
  - e. Waste tires;
  - f. Treated wood;
  - g. Bio-hazard waste;
  - h. Sewage; and
  - i. Other environmental regulated media.

#### D. Miscellaneous Services

In addition to emergency and non-emergency activities listed above, ACTA may require the following:

- Management and disposal of both hazardous and non-hazardous wastes generated by ACTA's maintenance operations and construction projects;
- Abatement of lead-based paint and asbestos-containing materials in/on structures operated and maintained by ACTA;
- Removal and/or cleaning of materials contaminated by biological wastes;
- Storm drain or other storm water drainage system cleaning and maintenance including the use of remote camera equipment to verify conditions;
- Pressure-washing/steam cleaning; and
- Assist ACTA staff on projects that involve confined space.

## 2.2. Required Equipment

Contractors shall have, or have immediate access to, the following equipment and services:

- Black iron vacuum trucks steel – 35 BBL to 70 BBL, and/or 90 to 120 BBL;
- Emergency response unit – Level B;
- Blood & Bio cleanup; and
- Registered waste tire hauler.

It is recommended that Contractors have, or have immediate access to, the following equipment and services:

- Roll-off bins and trailer;

- Tandem roll-off trailer;
- Flatbed box van;
- Booming vessel and work skiff – w/ Hull & Machinery Insurance;
- Portable containment boom system – 1000’ of boom with hydraulic power pack;
- Oil spill skimmers – drum style, mop style;
- Skim packs;
- Mercury vapor analyzer and Organic Vapor Analyzer (calibrated);
- Haz Mat kit – chemical identification;
- Sufficient amount/length of containment boom (at least 10,000 feet);
- Super sucker/jetter combos; and
- Trauma scene practitioner with license to haul medical waste.

### 2.3. General Requirements

Contractors shall perform all tasks in accordance with all applicable local, state, and federal regulations. Contractors must also perform activities in compliance with all appropriate elements of ACTA’s policies and programs.

Contractors must be capable of responding to regulated and/or hazardous materials discharged to inland, river/canal, and coastal/ocean environments.

#### A. Laboratory Services

Selected Contractor(s) must have access to the services of a California State Certified environmental laboratory equipped to perform waste characterization analyses mandated by the Code of Federal Regulations (CFR) 40 and Code of California Regulations (CCR) Title 22 and in accordance with USEPA Solid Waste (SW)-846 test methods of evaluation of solid wastes, physical/chemical methods. The capabilities of the lab must include, but are not limited to, analysis by Atomic Absorption (AA), AA – flame, AA Spectroscopy – Graphite furnace, Fluorescence, Gas Chromatography (GC), and GC-Mass Spectrometry for all regulated organics, X-ray Fluorescence, Organic Vapor Analyzer, Inductively Coupled Plasma/Atomic Emission Spectroscopy, pH, and flash-point testing.

#### B. Disposal and Transportation

Contractors shall provide disposal services of a fully permitted waste disposal facility or facilities capable of handling non-hazardous and hazardous wastes, including California regulated wastes, Resource Conservation and Recovery Act (RCRA) Federal regulated wastes, and liquid/solid waste under the Toxic Substances Control Act.

All subcontractors and all identified hazardous or regulated waste recycling and disposal sites must be reviewed and approved for environmental acceptability and regulatory compliance with applicable state and federal laws, at the sole discretion of ACTA. All recycling, treatment, storage, and/or disposal facilities must operate under Federal and State licenses/permits.

The Contractor shall ensure that all wastes handled, stored or transported are properly contained and labeled for shipment in accordance with all applicable State and Federal regulations.

Contractors shall provide transportation of hazardous waste to a treatment, storage or disposal facility by a licensed and permitted hazardous waste transporter.

Contractors shall furnish all labor, materials, and equipment as well as technical expertise, supervision, and management to effectively identify, package, clean up, and transport the various regulated, non-hazardous and hazardous waste for recycling, treatment, and/or disposal.

#### C. Manifest Documents

Contractors shall provide properly prepared non-hazardous and hazardous waste manifest documents for waste to be transported to disposal or treatment facilities.

On non-emergency or routine jobs, Contractors shall coordinate with the ACTA representative and hazardous waste disposal or treatment facilities to provide hazardous waste profiles and manifests to ACTA.

### 2.4. Project Management

Selected Contractors will work directly under the supervision of the ACTA Environmental Manager.

### 2.5. Project Deliverables

Contractors must submit summary reports describing all work assignments, including a running total of costs at the completion of each contract task order event. The report must be cumulative. ACTA will provide the format for the report.

## 3. PROPOSAL REQUIREMENTS

### 3.1. Proposal Submission

Proposals shall not exceed 24 pages, written in no less than 11-point font, with 1-inch page margins. Any supporting documentation provided in an Appendix will not count towards this limit. Resumes, rates and fees, and the contract administrative documents may be submitted in an Appendix.

One (1) digital copy (pdf) of your proposal including appendices must be submitted on or before 3:00 p.m. **PST Tuesday, March 14, 2023** to:

Delivery By Email: [hazmat-rfp@acta.org](mailto:hazmat-rfp@acta.org)

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

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

By submitting a proposal, Proposers certify that such proposal constitutes their full and complete written response to the RFP and evidences their acknowledgement that additional written material outside of such proposal shall not be considered in connection with this RFP, unless ACTA provides a written request that



they submit additional written materials. Absent such written request, Proposers are instructed to not submit to ACTA written or other materials outside of the proposal, either in a subsequent interview or otherwise.

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

### 3.2. Evaluation Process and Selection Criteria

All proposals meeting the requirements of this RFP shall be reviewed and rated by an evaluation committee according to the following criteria: 1) Firm Qualifications; 2) Project Personnel and Staffing ; 3) Project Management; 4) Pricing; and 5) Responsiveness and Safety. For more detail, refer to sections 3.3.3 to 3.3.7. See Attachment 3 for RFP Selection Evaluation Form.

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

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

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

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

### 3.3. Proposal Content

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

#### 3.3.1 Transmittal Cover Letter

Provide a narrative which introduces the firm and team highlighting the special strengths of the firm to perform the work requested in this RFP. Please include a statement in the cover transmittal letter indicating that the firm can comply with the agreement terms set forth in Attachment 4. The letter should be signed by an authorized principal of the proposing firm.

#### 3.3.2 Table of Contents

Include a table of contents of the materials presented in the Proposal showing the applicable page numbers.

#### 3.3.3 Firm Qualifications

Provide a brief description of the firm including legal structure, headquarters and other locations. Provide a narrative describing the firm's qualifications to perform the project work, including past (relevant) experience and at least three client references, with contact names and information. Include information regarding your firm's experience involving the size and level of complexity of the proposed project. For any project referenced to demonstrate your firm's qualifications, provide the year or years in which the work was performed, and, if applicable, note which member or members of the proposed project team were involved.

#### 3.3.4 Project Personnel and Staffing

Provide a brief description of all key personnel and technical staff (including vendors, partners or subcontractors) to be involved and their relationship to the services to be provided.

Include names, titles, licenses, certificates, fields of expertise, and relevant experience for all proposed personnel and staff shown on an organizational chart.

- Identify the Project Manager for the proposed services.
- Complete resumes should be provided as part of an appendix to the proposal.

#### 3.3.5 Project Management

Provide information that identifies how the project will be managed, with a project organization chart which depicts the organization of the project team, including reporting relationships to ACTA and supervision of project team staff.

#### 3.3.6 Pricing

Provide rates and pricing for all personnel and materials to be provided under the Agreement, including hourly and overtime rates. Provide any additional details for assumptions or other contingencies that apply to the rates and pricing.

#### 3.3.7 Responsiveness and Safety

Provide narratives for the following:

- List the estimated time of arrival (ETA) for both your Project Manager and the work crew/equipment to get on site for an emergency call-out:
- List the ETA for an emergency spill on the water;
- List the ETA for an emergency spill along the railroad (at locations not accessible by rubber tire vehicles).
- List experience videotaping and cleaning underground storm drains;
- List union affiliations;
- List any agency violations your company has had in the past 10 years;
- List any on the job injuries your company has had in the past 10 years and a description of the injuries;
- List any waste streams your company is restricted from handling; and

- Identify if the firm is trained and qualified to transport and dispose of treated wood waste and waste tires.

#### 3.3.8 Small Business Enterprise Participation Requirements

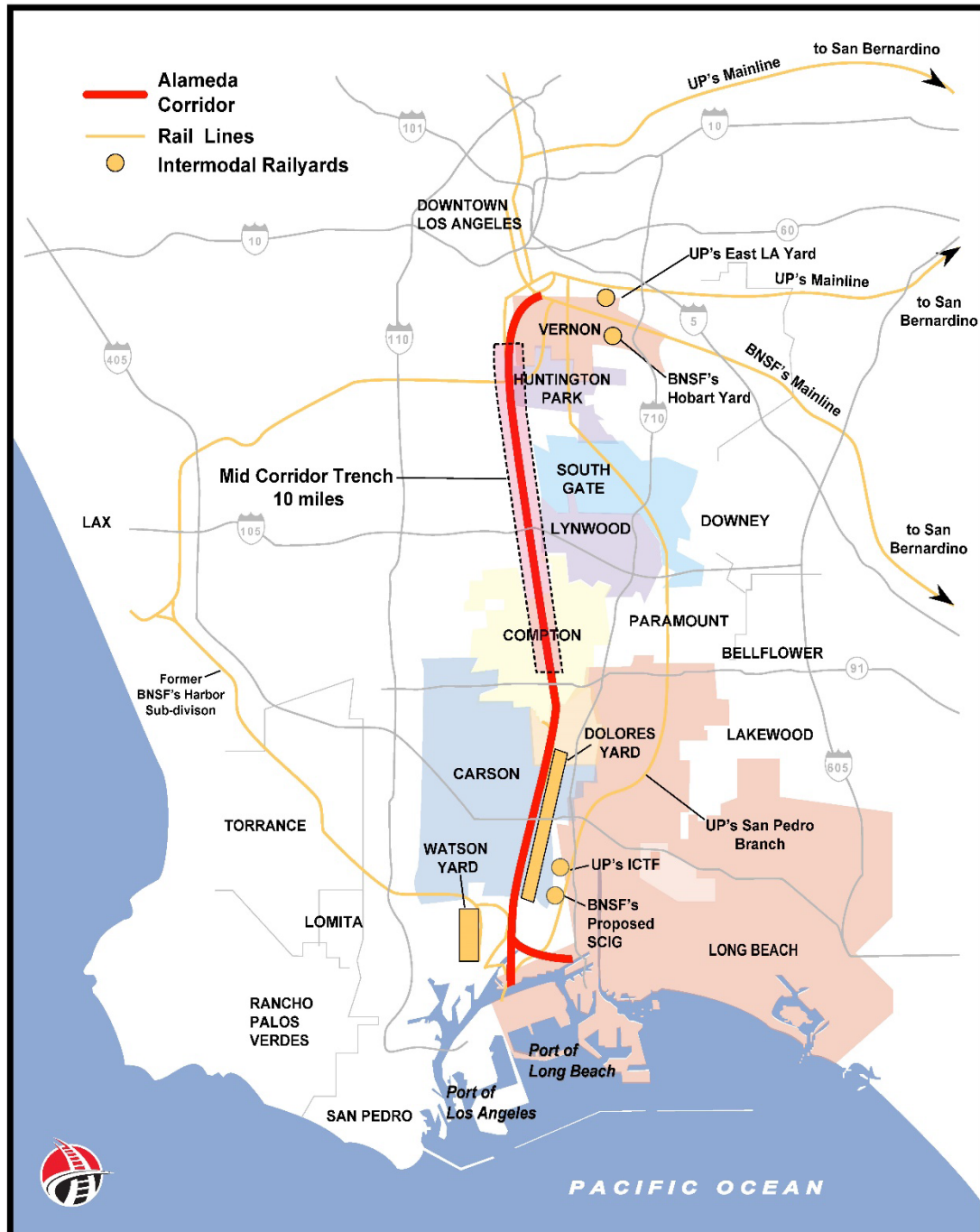
The ACTA Governing Board has established a Small Business Enterprise (SBE) participation goal for all ACTA contracts awarded after January 1, 2017, of an aggregate average of 25% by contract value, and/or 25% of all contracts awarded to certified SBE firms. No minimum SBE participation level is required for the proposed Project, however, if a Proposer or team member is a certified SBE firm, please so state in this section of your proposal.

#### 3.3.9 Required Evidence of Insurance

Provide a letter from your insurance carrier indicating that the insurance requirements for this project as described in the sample agreement (Attachment 4) are presently part of the proposer's coverage, or that the insurance company can provide such coverage should the proposer be selected. The insurance carrier must be aware of the indemnification requirements also set forth in the sample agreement. Proposers are not required to purchase the required insurance in order to submit a proposal; however, all required insurance will need to be submitted at the time of contract award.

## ATTACHMENT 1

Alameda Corridor Map



## **ATTACHMENT 2**

### **SCOPE OF WORK**

The Alameda Corridor Emergency Response and Hazardous Waste Management program responds to both emergency and non-emergency chemical spills, releases of regulated and/or hazardous materials, and abandoned wastes within the Alameda Corridor. The requests for emergency response and hazardous waste management services come from the Railroads, and State and Federal agencies, including the United States Coast Guard (USCG), United States Environmental Protection Agency (USEPA), California Department of Fish and Wildlife (CDFW), and the Regional Water Quality Control Board (RWQCB).

#### **I. General**

The Contractor shall support and perform all phases of on-site waste management on land, on or adjacent to railroad tracks and in the water. These include the containment of spills, and cleanup of releases or abandoned waste on an as-needed basis in the following categories:

##### **A. Emergency Response**

Emergency Response is the ability to respond to a spill or uncontrolled release of a hazardous or regulated material on an emergency basis at any time, 24 hours per day, 7 days per week (including holidays), and provide containment and cleanup as required by local, state and federal regulatory agencies, and as directed by ACTA. The Contractor shall have the ability to arrive on-scene within 30 to 45 minutes of notification. These spills may involve containment and cleanup operations in storm drains, pipelines, groundwater, and in other water bodies, including navigable waters of the state, such as the ocean, harbors, lakes, reservoirs, streams, canals, and rivers.

##### **B. Unidentified Waste**

Unidentified wastes are unlabeled containers with unknown substances deposited on property operated and maintained by ACTA that require removal.

1. The Contractor shall have the ability to identify, package, and transport the unidentified wastes deposited on ACTA properties (including on railroad tracks) or right-of-way for recycling, treatment, or disposal.
2. Response to this waste stream will usually be required during normal working hours.

##### **C. Waste Management**

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

1. Response to this waste stream will usually be required during normal working hours.
2. The Contractor shall be required to be on-site at a facility operated and maintained by ACTA at a mutually agreed-upon time with an authorized ACTA representative.

3. Waste management services may include, but are not limited to:
  - a. Removal and excavation of contaminated soils and debris;
  - b. Laboratory packing of chemicals;
  - c. Packaging and consolidating hazardous materials;
  - d. Identifying and packaging unidentified materials;
  - e. Characterizing and profiling of waste prior to disposal; and
  - f. Transporting waste for disposal.
4. For the purpose of this Agreement, regulated and/or hazardous materials include, but are not limited to:
  - a. Asbestos, crude oil and petroleum products, including fuel oil, mineral oil, gasoline, diesel;
  - b. Corrosive liquids, including acid, and alkaline solutions;
  - c. Polychlorinated Biphenyls (PCBs) and PCB-contaminated materials;
  - d. Mercury, lead, and other metals;
  - e. Waste tires;
  - f. Treated wood;
  - g. Bio-hazard waste;
  - h. Sewage; and
  - i. Other environmental regulated media.

#### **D. Miscellaneous Services**

In addition to emergency and non-emergency activities listed above, ACTA may require the following:

1. Management and disposal of both hazardous and non-hazardous wastes generated by ACTA's maintenance operations and construction projects;
2. Abatement of lead-based paint and asbestos-containing materials in/on structures operated and maintained by ACTA;
3. Removal and cleaning of materials contaminated by biological wastes;
4. Storm drain or other storm water drainage system cleaning and maintenance including the use of remote camera equipment to verify conditions;
5. Pressure-washing/steam cleaning; and
6. Assist ACTA staff on projects that involve confined space.

## **II. Required Equipment**

The Contractor shall have, or have immediate access to, the following equipment and services:

- Black iron vacuum trucks steel – 35 BBL to 70 BBL, and/or 90 to 120 BBL;
- Hi-rail black iron vacuum trucks steel – 90 to 120 BBL;
- Emergency response unit – Level B;
- Blood & Bio cleanup; and
- Registered waste tire hauler.

It is recommended that the Contractor have, or have immediate access to, the following equipment and services:

- Roll-off bins and trailer;

- Tandem roll-off trailer;
- Flatbed box van;
- Booming vessel and work skiff – w/ Hull & Machinery Insurance;
- Portable containment boom system – 1000' of boom with hydraulic power pack;
- Oil spill skimmers – drum style, mop style;
- Skim packs;
- Mercury vapor analyzer and Organic Vapor Analyzer (calibrated);
- Haz Mat kit – chemical identification;
- Sufficient amount/length of containment boom (at least 10,000 feet);
- Super sucker/jetter combos; and
- Trauma scene practitioner with license to haul medical waste.

### III. General Requirements

The Contractor shall perform all tasks in accordance with all applicable local, state, and federal regulations. The Contractor shall also perform activities in compliance with all appropriate elements of ACTA policies, and programs.

The Contractor shall be capable of responding to regulated and/or hazardous materials discharged to inland, river/canal, and coastal/ocean environments.

#### **A. Laboratory Services**

The Contractor shall have access to the services of a California State Certified environmental laboratory equipped to perform waste characterization analyses mandated by the Code of Federal Regulations (CFR) 40 and Code of California Regulations (CCR) Title 22 and in accordance with USEPA Solid Waste (SW)-846 test methods of evaluation of solid wastes, physical/chemical methods. The capabilities of the lab must include, but are not limited to, analysis by Atomic Absorption (AA), AA – flame, AA Spectroscopy – Graphite furnace, Fluorescence, Gas Chromatography (GC), and GC-Mass Spectrometry for all regulated organics, X-ray Fluorescence, Organic Vapor Analyzer, Inductively Coupled Plasma/Atomic Emission Spectroscopy, pH, and flash-point testing.

#### **B. Disposal and Transportation**

The Contractor shall provide disposal services of a fully permitted waste disposal facility or facilities capable of handling non-hazardous and hazardous wastes, including California regulated wastes, Resource Conservation and Recovery Act (RCRA) Federal regulated wastes, and liquid/solid waste under the Toxic Substances Control Act.

All subcontractors and all identified hazardous or regulated waste recycling and disposal sites must be reviewed and approved for environmental acceptability and regulatory compliance with applicable state and federal laws, at the sole discretion of ACTA. All recycling, treatment, storage, and/or disposal facilities must operate under Federal and State licenses/permits.

The Contractor shall ensure that all wastes handled, stored or transported are properly contained and labeled for shipment in accordance with all applicable State and Federal regulations.

The Contractor shall provide transportation of hazardous waste to a treatment, storage or disposal facility by a licensed and permitted hazardous waste transporter.

The Contractor shall furnish all labor, materials, and equipment as well as technical expertise, supervision, and management to effectively identify, package, clean up, and transport the various regulated, non-hazardous and hazardous waste for recycling, treatment, and/or disposal.

#### **C. Manifest Documents**

The Contractor shall provide properly prepared non-hazardous and hazardous waste manifest documents for waste to be transported to disposal or treatment facilities.

On non-emergency or routine jobs, the Contractor shall coordinate with an ACTA representative and hazardous waste disposal or treatment facilities to provide hazardous waste profiles and manifests to ACTA.

#### **D. Project Management**

The Contractor shall work directly under the supervision of the ACTA Environmental Manager.

#### **E. Project Deliverables**

The Contractor shall submit a summary report describing all work assignments, including a running total of costs at the completion of each contract task order event. The report must be cumulative. ACTA will provide the format for the report.



## ATTACHMENT 3

### RFP Selection Evaluation Form

#### SCORING GUIDELINES:

**Rater's Score:** (Range 0-5) 0=not included/non responsive; 1=Marginal Abilities, Serious Deficiencies; 2=Adequate with Minor Deficiencies; 3=Adequate, Standard-Acceptable; 4=Well Qualified; 5=Exceptionally Well Qualified.

**Weighing Factor:** Input using a range of 1 through 6, with 1 being of relative lower importance and 6 being relative highest importance. You may use each number (1 through 6) more than once; however, in establishing weights, the total of all the weighing factors (A -E) must equal 20.

**Weighted Score=** Rater's Score multiplied by (x) Weighing Factor. Totals should be calculated for each criterion.

**Total score=** Sum of all weighted scores.

Firm Name		Evaluated by		Date	
CRITERIA TO BE RATED		RATER'S SCORE	WEIGHING FACTOR	WEIGHTED SCORE	
<b>A. Firm Qualifications</b>	How long has the company been in business? Has the company done similar work? Level of expertise in subject matter areas?		6		
<b>B. Project Personnel and Staffing</b>	Qualification and experience of proposed personnel for requested services? On-site availability of team and project manager?		3		
<b>C. Project Management</b>	Has an organizational chart been provided? Reporting relationship with ACTA identified?		2		
<b>D. Pricing</b>	Competitive rates and fees proposed? Are proposed budget management, fees, and staff hours proposed and clearly defined?		5		
<b>E. Responsiveness and Safety</b>	Agency violations in the past 10 years? On the job injuries in the past 10 years? Emergency Response Time?		4		
	Maximum points possible=100		A+B+C+D+E=20	Total Points=100	

**ATTACHMENT 4**

**Sample Agreement**

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

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
\_\_\_\_\_

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 \_\_\_\_\_, a \_\_\_\_\_ corporation, whose address is \_\_\_\_\_ ("Consultant").

WHEREAS, ACTA requires on a temporary and occasional basis professional, scientific, expert and technical as-needed services for handling and removal of hazardous and non-hazardous waste found on property under the management and control of ACTA, said services to be performed by full-service waste disposal companies for transportation, storage, recycling and disposal of such waste ("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: 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 ("Directive").

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, \_\_\_\_\_ ("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. Five (5) years has lapsed from the effective date of this Agreement; or
- b. ACTA's Board, in its sole discretion, terminates this Agreement pursuant to Section 6.

#### 5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant and Consultant shall accept a sum not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). 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 Five Million Dollars (\$5,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision, a severability of interest clause and have the railroad exclusion deleted. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

#### (b) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than Five Million Dollars (\$5,000,000) 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) Ocean Marine Liability

Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connections with Consultant's operations. The cost of the insurance shall be borne by Consultant. The coverage shall be 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 City if Best's Rating is not available). Coverage shall include, but not be limited to:

- (i) Hull and machinery coverage up to the value of the vessel(s);
- (ii) Protection and Indemnity coverage with combined single limits of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, illness, death, loss of or damage to the property of another, and Jones Act risks or equivalent thereto internationally.
- (iii) Ship repairers legal liability to cover loss, damage or expenses to any property temporarily in the Consultant's care, custody or control.

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.

(e) Pollution Liability Insurance or Environmental Impairment Liability

Consultant shall procure and maintain throughout the term of this Agreement, at its cost, Pollution Liability coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's Rating is not available), with Consultant's normal limits of liability but not less than Five Million Dollars (\$5,000,000) combined single limit for injury or death or property damage arising out of each accident or occurrence covering Consultant's services under this Agreement. Said limits shall

provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his judgment, such retention or self-insurance is justified by the net worth of Consultant. Consultant's pollution liability shall include coverage for losses caused by pollution conditions that arise from the operation of Consultant described under the scope of services of this Agreement and include: (a) on-site and off-site coverage for bodily injury, sickness, disease, mental anguish or shock sustained by a person, including death; (b) on-site and off-site property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; (c) on-site and off-site defense including costs, charges and expenses incurred in the investigation adjustment or defense of claims for such compensatory damages.

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

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

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

#### 10.2 Insurance Procured by Consultant on Behalf of ACTA

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and where Consultant is required to name ACTA, its Board, officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause ACTA to be named as an additional insured on all policies it procures in connection with this Section 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

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

/////

/////

/////

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

CONSULTANT NAME

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

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

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

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

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

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

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

APPROVED AS TO FORM

\_\_\_\_\_, 2023  
\_\_\_\_\_, \_\_\_\_\_ City Attorney

By \_\_\_\_\_  
\_\_\_\_\_, ACTA Co-General Counsel

Rev. 12-30-22