

File: 07-LA-103-0.9  
EA: 34490  
Project: 0718000063  
Agreement: 07R399  
DOT: 921646J  
RMP/Subdivision: 17.46/ Long Beach

## **AGREEMENT TO SUPPORT CONSTRUCTION OF THE ANAHEIM OH BRIDGE RAILS UPGRADE**

This Agreement ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date") by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority, acting by and through its Governing Board, herein called "ACTA", and the State of California, acting by and through its DEPARTMENT OF TRANSPORTATION, herein called "State" and collectively referred to herein as "The Parties."

### RECITALS:

- A. State desires to replace the existing bridge railings on the Anaheim Overhead (Bridge #53-2627) at DOT# 921646J, Long Beach Subdivision at Railroad Milepost 17.46 in the City of Long Beach, Los Angeles County, California ("Project").
- B. Railroad operations and facilities are located within the Project's limits.
- C. All work affecting rail operations and public crossings are under the jurisdiction of the California Public Utilities Commission ("CPUC") and their authorization must be obtained prior to start of Project.
- D. In order for the Project to proceed, State and ACTA agree that to comply with the CPUC and Federal safety requirements for the Project set forth in CPUC Orders and Federal requirements 23 CFR 140I and 646, State must seek and Railroad must provide flagging services and project oversight for the safety of Railroad and State operations.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### AGREEMENT:

- 1. It is agreed by the parties that ACTA, at no cost to ACTA, will provide **ten (10) days** of flagging support and project oversight as more specifically documented in the Estimate attached hereto as Exhibit "A".
- 2. State agrees to reimburse ACTA for actual costs and expenses reasonably and necessarily incurred by ACTA in performance of required activities in connection with the Project, including all direct and indirect overhead labor/construction costs. State recognizes that it can elect under 23 CFR 140.907 to reimburse ACTA for all direct and indirect overhead labor/construction costs using Federal additive rates and

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agrees to do so. ACTA's scope of work and the estimated amount of cost and expense to be incurred by ACTA in connection with the Project work are summarized in the estimate attached hereto as Exhibit "A" (the "Estimate"). Any additional work required incidental to that shown on the Estimate, but not specifically detailed thereon, may be included as part of this Agreement by written request or approval of State and ACTA. The parties acknowledge and agree that ACTA may recalculate and update the Estimate in the event that the Effective Date is greater than six (6) months after the date of the Estimate. Application of federally approved and State accepted labor additive will apply to current or future costs incurred after the effective date of this Agreement.

3. All work to be done hereunder by ACTA shall be done by ACTA's employees or ACTA's contractor(s) on a force account basis, the cost hereof to be paid to ACTA by State in the manner herein set forth.
4. The parties hereto agree State is a qualified self-insurer.
5. All applicable portions Title 23, Code of Federal Regulations, Parts 646A, 646B and 140I are by reference incorporated herein and made a part hereof.
6. The records accounts of ACTA relating to the project shall be open for inspection and audit by State and/or Federal Government during normal business hours at ACTA's Long Beach, California headquarters for a period of three years from the date final payment from State is received by ACTA in connection with the Project.
7. Under Federal Regulations there are no ascertainable net benefits to ACTA and there shall be no required ACTA sharing of the costs.
8. In accordance with the California Prompt Payment Act, Government Code Sections 927 et seq., all undisputed bills shall be paid within 45 days of receipt of the invoice from ACTA. In the event that State determines that any costs set forth in an invoice are not allowable, State shall deliver written notice to ACTA identifying the disputed amounts and setting forth State's reasoning as to why such amounts are not allowable, and upon ACTA's receipt of such notice, State and ACTA shall use commercially reasonable efforts to promptly resolve any such disputed amounts. The provisions of this Section 8 shall survive termination of this Agreement. All invoices shall be sent electronically to: [HQ.Right.of.Way.Railroads@dot.ca.gov](mailto:HQ.Right.of.Way.Railroads@dot.ca.gov)

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9. If applicable under this Agreement, State will obtain and will cause its contractor to obtain a right of entry from the City of Los Angeles Harbor Department and the City of Long Beach Harbor Department using their then current form of Contractor's Right of Entry Agreement before the start of the Project's work, and the Project will not start until all agreements and authorizations are executed
10. No alternation or variation of the terms of this Agreement shall be valid unless made by a formal amendment and executed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
11. The provisions of this Agreement are not intended to create duties or obligations or rights to third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
12. This Agreement is effective as of the Effective Date shown on the front page of this Agreement and after it is fully signed and executed by all parties' authorized signatories. Each party hereto represents and warrants that the person executing this Agreement on behalf of such party has full power and authority to enter into this Agreement.
13. ACTA shall submit its bills to State on a monthly basis for actual costs ACTA incurred for work performed by ACTA or its contractors. Upon receipt of a written notice that the services described herein are no longer required or upon the expiration of this Agreement, whichever comes first, ACTA shall have 270 days to submit its final billing to State.
14. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of ACTA and upon the assigns of State.
15. This Agreement shall terminate upon completion of the work performed by ACTA pursuant to Article 1, or five years from the Effective Date of this Agreement, whichever is earlier in time.
16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, by their officers thereunto duly authorized, as of the day and year first above written.

STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION

ALAMEDA TRANSPORTATION  
CORRIDOR AUTHORITY (ACTA)

By: \_\_\_\_\_  
TIAIRA T MOERING-HILL  
Chief, office of Railroad & Utility Relocations  
Division of Right of Way and Land Surveys

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

Recommended for Approval:

By: \_\_\_\_\_  
TERESA McNAMARA  
HQ Railroad Coordinator  
Division of Right of Way and Land Surveys

By: \_\_\_\_\_  
APPROVED AS TO FORM  
HYDEE FELDSTEIN SOTO  
LOS ANGELES CITY ATTORNEY

By: Mario Zamorano Jr  
MARIO ZAMORANO Jr.  
Associate Right of Way  
Agent Division of Railroads

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## EXHIBIT "A"

### COST ESTIMATE

**Locations:** SR-103-LONG BEACH CA  
DOT#921646J  
Railroad MP 17.46

**Project:** To upgrade bridge railings to meet current standards

**ESTIMATE:**

Flagging 10 days @ \$1,824/day (2 flaggers/day)	\$18,240.00
Project Oversight	15,000.00
15% Administrative Fee	4,986.00
Contingency @25%	<u>\$9,556.50</u>
<b>Total =</b>	<b><u>\$47,782.50</u></b>

Note: This is an estimate only. ACTA will bill on an actual cost basis.