

ACTA AGREEMENT NO. C0908

AGREEMENT BETWEEN
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY
AND
EVERETT DOREY LLP

THIS AGREEMENT is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY (“ACTA”), a Joint Powers Authority, acting by and through its Governing Board, and EVERETT DOREY LLP, located at 18300 Von Karman Avenue, Suite 900, Irvine, California 92612 (“Outside Counsel”).

WHEREAS, ACTA has a need for specialized legal services relating to general litigation matters and other advice; and

WHEREAS, Outside Counsel indicates that it has the expertise and competence to perform the professional legal services sought by ACTA; and

WHEREAS, ACTA has selected Outside Counsel to provide such services from time to time as directed by ACTA’s Co-General Counsel, and Outside Counsel desires to provide such services to ACTA and is able to do so without a conflict of interest; and

NOW, THEREFORE, in consideration of the promises, covenants, terms and conditions contained herein, the parties hereby covenant, agree and represent as follows:

1. SCOPE OF REPRESENTATION AND PARTNERING

Outside Counsel is retained to assist ACTA’s Co-General Counsel in providing legal services for ACTA acting by and through its Governing Board. Outside Counsel shall at all times work under the direction of ACTA’s Co-General Counsel. ACTA and its Co-General Counsel shall rely on the competence, expertise and experience of Outside Counsel. At all times, Outside Counsel shall provide professional legal advice and services at the highest level expected of law firms providing legal services in the Los Angeles region. This is a non-exclusive agreement to provide legal services to ACTA and ACTA may, at its discretion, augment the services with another law firm or law firms or select to terminate Outside Counsel’s services in a manner consistent with this Agreement.

ACTA and Outside Counsel recognize and agree that an important purpose of this Agreement is to promote effective collaboration between its Co-General Counsel and Outside Counsel so that, among other things, Co-General Counsel is able to gain familiarity with the legal issues presented in these matters and for Outside Counsel to impart substantive subject matter knowledge to ACTA’s lawyers. To this end, ACTA’s Co-General Counsel and Outside Counsel both agree to make reasonable efforts to coordinate their efforts and work.

2. TERM OF AGREEMENT

The term of this agreement shall be deemed to commence upon the date of signature by ACTA's CEO and, subject to the provisions of Section 6(A), shall be for a term of five years.

3. OUTSIDE COUNSEL SERVICES AND RESPONSIBILITIES

It is understood that ACTA's Co-General Counsel renders day-to-day and on-going legal services to ACTA, and that Outside Counsel shall perform its services hereunder at the direction of Co-General Counsel. Subject to the general supervision of Co-General Counsel, Outside Counsel shall perform legal services as may be necessary or desirable in connection with general litigation matters and other advice and representation as required. It is understood that Outside Counsel shall function as attorneys at law in the independent practice of its profession and not as employees of ACTA.

A. Professional Ethics and Conflicts of Interest

ACTA recognizes that Outside Counsel may have clients that, from time to time, may have interests adverse to ACTA. Any such representation shall be in accordance with the ethical duties of members of the State Bar of California including, without limitation, those established by the Bar's Rules of Professional Conduct. Outside Counsel shall send written notice to Co-General Counsel of any actual or potential conflict of interest with ACTA that exists during Outside Counsel's engagement under this Agreement and request a waiver of such conflict by Co-General Counsel. The request for waiver shall describe in detail the nature of the proposed engagement by Outside Counsel, the nature of the conflict, and why Outside Counsel believes a waiver is appropriate. Outside Counsel's representation of ACTA does not create an attorney/client relationship with any of ACTA's member agencies.

B. Key Outside Counsel Personnel

1. Outside Counsel's Supervising Attorney for this Agreement shall be Seymour Everett. Outside Counsel's Supervising Attorney shall not be changed without Co-General Counsel's written authorization.

2. Outside Counsel's Supervising Attorney shall have full authority to act for Outside Counsel on all daily operational matters under this Agreement and shall serve as or designate Lead Counsel for all matters performed pursuant to this Agreement. Designation of a Lead Counsel other than the Supervising Attorney shall be subject to Co-General Counsel's prior written approval.

C. Legal Representation

1. Outside Counsel shall provide ACTA with the necessary representation by qualified staff at the least costly billing category. The names of personnel authorized to provide services under this Agreement and the hourly rates for each staff member are listed in Exhibit A, attached hereto and incorporated herein.

2. Any use of personnel other than as enumerated in Exhibit A shall be subject to the prior written approval of Co-General Counsel. Outside Counsel may hire consultants, but

only with the prior written approval of Co-General Counsel. Outside Counsel may retain other law firms or attorneys as subcontractors to provide the legal services covered by this Agreement, but only with the prior written approval of Co-General Counsel. Any such written approval of subcontractors must set forth the name of each approved attorney or other personnel and the agreed rate for such individual. Outside Counsel will require any such subcontractors or consultants to comply with the terms and conditions of this Agreement and will indemnify, defend and forever hold harmless ACTA from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of any negligent acts errors, or omissions or willful misconduct of any such subcontractors or consultants.

3. Outside Counsel shall provide all required reports referenced in this Agreement.

4. Outside Counsel shall meet with Co-General Counsel as requested.

5. Outside Counsel shall consult with Co-General Counsel on trial and tactical decisions.

6. Outside Counsel shall maintain all backup documentation to support all entries included in its billings.

4. COMPENSATION

A. Not To Exceed Amount

For the services rendered to ACTA by Outside Counsel pursuant to this Agreement, ACTA shall pay Outside Counsel at hourly rates not-to-exceed the hourly rates attached hereto as Exhibit A, which rates shall remain in effect for the term of this Agreement. All fees and expenses billed pursuant to this Agreement shall not exceed Seventy Thousand Dollars (\$75,000) without prior mutual agreement of the parties and a written amendment.

B. Outside Counsel's Obligation For Continued Performance

In the event that Outside Counsel's fees, costs and expenses, in the aggregate, exceed the amount appropriated by ACTA as provided herein, Outside Counsel shall not be obligated to provide services or incur any further costs or expenses on the work required hereunder, and ACTA shall not be liable for fees or costs in excess of the amount appropriated, unless the appropriated amount is increased as provided herein. Outside Counsel shall be responsible for notifying Co-General Counsel that the aforesaid appropriated amount will be expended before completion of the work required hereunder and that Outside Counsel will need additional funds if ACTA desires further work. Outside Counsel shall give written notice to Co-General Counsel when Outside Counsel's expenditures under this Agreement are equal to sixty percent (60%) and eighty percent (80%) of the total dollar value appropriated for this Agreement so that Co-General Counsel has sufficient time to consider whether it desires to seek an additional appropriation and written amendment to the Agreement.

C. Fees

ACTA shall pay Outside Counsel for the services performed by Outside Counsel which are reasonably necessary. The fees for such services shall be based upon the time expended to render the required services, with fractions thereof being stated to the tenth of an hour, and shall be computed at a rate not to exceed the rates specified for each category of staff as listed in Exhibit A.

D. ACTA's Reservation of Rights to Obtain Reimbursement

ACTA shall pay Outside Counsel based on Outside Counsel's submission of monthly billing statements consistent with the provisions of this Agreement. Even though ACTA makes payment pursuant to billing statements, ACTA shall have the right to demand reimbursement any time ACTA determines that previously paid costs and expenses were not properly billed by Outside Counsel. Outside Counsel shall promptly reimburse ACTA for such costs and expenses previously paid by ACTA.

E. Expenses

ACTA shall reimburse Outside Counsel for reasonable, actual out-of-pocket expenses enumerated below incurred in performing the work specified herein. Such out-of-pocket expenses over \$50.00 must be supported by appropriate documentation for reimbursement. Absent the express prior written approval of Co-General Counsel, ACTA will not pay for any extraordinary expenses incurred in any legal matter. Co-General Counsel must approve in writing any item of expense that exceeds \$1,000. Such expenses include, but are not limited to, expert witnesses, consultant services, investigative services, computer litigation support services, videotaping of depositions, temporary office help, travel expenses, meals as well as other expenses. Outside Counsel shall note that ACTA is exempt from all filing fee charges.

1. Reimbursable ordinary expenses shall include, but are not limited to:

a) Deposition fees. ACTA expects Outside Counsel to keep the costs of deposition transcripts to a minimum. When depositions are taken and Outside Counsel receives the original deposition transcript, ACTA shall not pay the court reporter's fee for providing Outside Counsel with an extra photocopy of the deposition transcript. ACTA expects Outside Counsel to make a photocopy of the original deposition transcript at Outside Counsel's office. Likewise, when attending depositions of third parties or third-party witnesses, ACTA requests that, if Outside Counsel believes an additional copy of the deposition transcript is necessary, Outside Counsel agree with opposing counsel to share the costs. Prior written approval from Co-General Counsel must be obtained before ordering any expedited original or expedited copy of a deposition transcript.

b) Deposition summaries, if necessary, should be brief and should be completed by the deposing attorney. ACTA shall not pay for a paralegal or other lawyer to summarize the deposition transcript unless trial is imminent. ACTA shall not pay for summaries that are, in effect, a complete regurgitation of the underlying deposition.

c) Transcript fees.

- d) Messenger service. Note that where possible, documents should be transmitted via email or facsimile.
- e) Process service.
- f) In-house document reproduction. Outside Counsel may charge up to \$0.10 cents per page for photocopies. The billing statement shall contain the total number of copies made.

2. Reimbursable extraordinary expenses shall include charges of which Outside Counsel has obtained Co-General Counsel's prior written approval. Such expenses shall include, but are not limited to:

- a) Consultants.
- b) Expert witnesses.
- c) Investigative services.
- d) Computer Assisted Legal Research ("CALR") - ACTA's decision to retain a particular firm is based in part on the firm's expertise and knowledge. ACTA therefore assumes familiarity with the basic substantive law at issue in the matter for which the firm was retained; any exception to this general expectation should be discussed fully at the time of retention. In conducting legal research Outside Counsel is expected to utilize all appropriate sources reasonably available, including previously prepared briefs and memoranda. Should Outside Counsel determine that it is necessary to incur CALR charges in order to satisfy the terms of this Agreement, Outside Counsel shall obtain Co-General Counsel's prior written approval to charge for such expenses. No charges for CALR shall be paid by ACTA without Co-General Counsel's prior written approval of such a charge.
- e) Outside Counsel shall describe in detail in its billings any travel expenses incurred by Outside Counsel. ACTA retains the right to audit these expenses. All travel shall be reimbursed in the same manner for which the travel would be reimbursable to ACTA employees if incurred by them in the performance of their duties. All travel expenses outside the Counties of Los Angeles, San Bernardino, Orange, Riverside, Imperial, Kern, Ventura and Santa Barbara shall be subject to Co-General Counsel's prior written approval. Unapproved travel shall not be reimbursed.
- f) Lodging. A receipt shall be submitted for reimbursement of single occupancy hotel accommodation, which will be reimbursed up to the maximum allowed to an ACTA employee if incurred by them in the performance of their duties.

3. Non-reimbursable expenses shall include, but are not limited to:
 - a) Staff time or overtime for performing secretarial, clerical, or word processing functions.
 - b) Charges for time spent complying with ACTA audits or billing inquiries.
 - c) Charges for work performed which Co-General Counsel had not authorized. Such work shall be a gratuitous effort by Outside Counsel.
 - d) Expenses that are considered to be part of general law firm overhead, including but not limited to, administrative time, secretarial time, calendaring, setting up files, indexing, word processing, air conditioning, equipment rental, office supplies, meals, snacks, beverages, seminars, books or association dues, etc.
 - e) Charges for telephone services except for international long distance which shall be charged at cost.

F. Most Favored Nation

Outside Counsel represents that, as of the date hereof, the rates set forth in Exhibit A and the other economic terms and conditions provided in this Agreement, taken individually, are at least as favorable to ACTA as those provided to the Long Beach City Attorney's Office or the Los Angeles City Attorney's Office for the same type of work set forth in Section 3 of this Agreement, in the event that either of these entities are a client of Outside Counsel (individually and collectively defined herein as "Municipal Client").

If during the term of this Agreement (including any extension or renewal) Outside Counsel has in effect or places into effect an agreement with a Municipal Client that has a lower rate or other more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel shall promptly offer such More Favorable Provision to ACTA, unconditionally by providing written notice thereof to ACTA (an "MFN Notice") and, at ACTA's election, this Agreement shall be deemed to have been modified to provide ACTA with such More Favorable Provision from the date such provision is effective for Outside Counsel's Municipal Client.

Outside Counsel's failure to provide ACTA with an MFN Notice shall not limit or otherwise impact ACTA's right to enjoy the benefits of the applicable More Favorable Provision(s).

5. BILLINGS AND PAYMENT

A. Payment to Outside Counsel shall be made by ACTA from time to time in due course of payments, but not more frequently than once each month, and only upon the submission of an itemized invoice as described in this Agreement, showing in reasonable and complete detail the services rendered and reimbursable costs and expenses incurred in connection with the services rendered. Outside Counsel and ACTA mutually recognize that legal services performed under this Agreement are being paid for with public funds and that,

therefore, a heightened duty of care exists in Outside Counsel and ACTA to ensure that Outside Counsel scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying out the goals of this Agreement. Outside Counsel pledges to observe a duty of reasonableness and cost-effective representation in all aspects of this Agreement.

B. Each invoice shall be signed by Outside Counsel's Supervising Attorney shall include the following certification:

"I certify under penalty of perjury that the above invoice is just and correct according to the terms of ACTA Agreement No. C0908 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."

Signature

Further, Outside Counsel 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 it is entitled to receive said amount pursuant to the terms of this Agreement. In the event Co-General Counsel assigns additional matters unrelated to each other to Outside Counsel, a separate and distinct identification must be reflected on each invoice submitted to ACTA and detailed description of work performed as assigned by Co-General Counsel as described above.

C. Outside Counsel shall not bill for hours other than those expressly devoted to the tasks as authorized under this Agreement, and Outside Counsel shall not bill for time not specifically assigned by Co-General Counsel. Outside Counsel shall not use legal professionals for secretarial work, and under no circumstances, bill for time consumed by attorneys making copies or scheduling appointments or taking care of matters or work which would otherwise be performed by a clerk or a secretary. Any and all conferences and activities engaged by Outside Counsel shall be fully described in complete detail and shall only take place when assigned by Co-General Counsel.

D. ACTA shall not pay for more than one attorney doing any particular task unless Co-General Counsel has given its prior written approval. ACTA will not pay for two or more attorneys attending the same meeting, deposition or court appearance unless approved by Co-General Counsel. ACTA will pay for the time recorded by more than one attorney for in-office conferences, but only if the conference is an occasional and necessary strategy meeting relating to some significant legal event or proceeding.

E. ACTA shall not pay for duplicative time charges by two or more attorneys, e.g., for legal research, reviewing documents, drafting documents, except as approved in writing by Co-General Counsel. ACTA shall not pay for "training" or "apprenticeship" time. ACTA shall not pay for the involvement of attorneys who work on the case irregularly or sporadically, unless a particular attorney has a special expertise that substantially advances a particular project or the prosecution/defense of a case.

F. Use of paralegals is encouraged providing they meet the requirements set forth herein. Assignment of work to paralegals should not result in duplicative activity between attorneys and paralegals, or the reworking or rewriting of paralegals' work product by attorneys. ACTA shall not pay for paralegal time spent performing clerical/secretarial work (e.g., filing, indexing, sorting, organizing, photocopying and bates stamping documents) unless Co-General Counsel has given its prior written approval. ACTA expects paralegals to perform true paralegal work, e.g., research, document productions, preparing discovery or responses, interviewing witnesses, etc.

G. Billings under this Agreement shall not be made in more than one-tenth of an hour (six minute) increments, and shall represent the devotion of a full six minutes before such an increment is billed. Under no circumstances shall Outside Counsel use "block billing" procedures, wherein a list of series of activities is done each day with only an aggregate amount of time specified. Instead, Outside Counsel shall provide a detailed specific entry for each separate task and sub-task reflecting the time for such task or subtask. All tasks set forth in Outside Counsel's billing documentation shall be highly specific and highly detailed. Overly generalized listings of task descriptions such as "review contract", "prepare for negotiations", "review/send communications" or similar entries shall not be acceptable. Outside Counsel shall provide detailed descriptions providing a meaningful record to an independent auditor reviewing said task description.

H. Each billing statement shall be identified by a unique number and itemized to include:

- a) Project name;
- b) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal;
 - 1) Each activity shall be billed in a reporting format as set forth in Exhibit B.
 - 2) A detailed description of specific activities for each attorney and/or paralegal shall include, but is not limited to:
 - (a) In-person conferences.
 - (b) Telephone calls.
 - (c) Correspondence.
 - (d) Research, including computerized legal research.
 - (e) Travel.
- c) Total current monthly expenses billed in the following categories:
 - 1) Consultant and expert witness expenses;
 - 2) Deposition and transcript expenses;
 - 3) Other miscellaneous expenses.
 - 4) Total cumulative expenses to date billed in (1)-(3).
- d) Total cumulative fees and expenses billed to date on project/matter.

Outside Counsel shall submit appropriate supporting documents with each billing statement. Such documents may include provider invoices, payrolls, and time sheets. ACTA may require, and Outside Counsel shall provide, all documents reasonably required to determine whether amounts on the billing statement are allowable expenses under this Agreement.

I. For payment and processing, all original billing statements should be sent to the following address:

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

In addition to, or in lieu of, mailing invoices per the above instructions, Consultant may email invoices to 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. GENERAL CONDITIONS

A. Termination or Suspension of Legal Services

1. Termination/Suspension For ACTA's Convenience

The ACTA Governing Board, in its sole discretion, may terminate and cancel all or part of this Agreement for any reason upon giving Outside Counsel ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

After receiving a notice of termination or suspension, unless otherwise directed by Co-General Counsel, Outside Counsel shall:

- 1) Stop services on the date and to the extent specified in the notice;
- 2) Continue to perform services not terminated or suspended by the notice;
- 3) Submit final billing for services rendered through the time of termination no later than thirty (30) calendar days from the effective date of termination; and
- 4) If Outside Counsel fails to submit a final billing within the time allowed, Co-General Counsel may determine the amount, if any, to be paid to Outside Counsel. Outside Counsel agrees that Co-General Counsel's determination shall be final.

2. Termination For Outside Counsel's Default

Services performed under this Agreement may be terminated in whole or in part by ACTA upon a default by Outside Counsel. Under this Agreement, Outside Counsel will be deemed in default if Outside Counsel:

- 1) Fails to perform the service(s) within the specified time period; or
- 2) Fails to perform any of the provisions contained in this Agreement; or
- 3) Fails to make adequate progress in the matter and endangers the performance of this Agreement's terms.

If ACTA terminates services under this Section 6.A.2, ACTA may obtain alternative legal services with terms and in a manner ACTA deems appropriate. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to ACTA for any excess costs associated with obtaining and utilizing alternative legal services.

3. Closing Report Upon Termination

If requested by Co-General Counsel, Outside Counsel shall deliver a Closing Report within two days of the termination of services. The Closing Report shall include, but is not limited to, a description of the status of projects handled by Outside Counsel prior to termination. Outside Counsel shall give Co-General Counsel all evidence, files and attorney work product for every matter in which Outside Counsel has represented ACTA, including but not limited to any computerized indices, programs and document retrieval systems created or used for the matter.

B. Independent Contractor Status

This Agreement is between ACTA and Outside Counsel and is not intended, and shall not be construed, to create, as between ACTA and Outside Counsel, the relationship of agent, servant, employee, partnership, joint venture or association. Outside Counsel understands and agrees that all Outside Counsel personnel furnishing services to ACTA under this Agreement are employees solely of Outside Counsel and not ACTA. Outside Counsel shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any Outside Counsel personnel for injuries arising from services performed under this Agreement.

C. Ownership of Documents

All information, documents, records, reports, data, or other materials furnished to Outside Counsel or other such information, documents, records, data or other materials to which Outside Counsel has access during their performance pursuant to this Agreement are deemed confidential and shall remain the property of ACTA. Outside Counsel shall not make use of such items for any purpose unrelated to the matter involved herein and shall not make oral or written disclosure thereof, other than as necessary for their performance hereunder, without the prior written approval of ACTA.

D. Indemnity for General Liability

Except for the sole negligence or willful misconduct of ACTA, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel 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 Outside Counsel'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, or omissions or willful misconduct incident to the performance of this Agreement by Outside Counsel 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.

E. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of ACTA, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel undertakes and agrees to defend, indemnify and hold harmless ACTA and any and all of its Boards, Officers, Agents, or Employees, Assigns and Successors in Interest from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against ACTA, its Boards, Officers, Agents, Employees, Assigns and Successors in Interest by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any negligent acts, errors, or omissions, or willful misconduct of Outside Counsel, its boards, officers, agents, employees, or subconsultants.

F. Workers' Compensation

Outside Counsel 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 the Outside Counsel shall comply with such provisions before commencing the performance of the tasks under this Agreement. Outside Counsel 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 Workers' Compensation and occupational disease requirements shall include coverage for all employees of Outside Counsel, and for all employees of any subcontractor or other vendor retained by Outside Counsel.

G. Professional Liability Insurance

Outside Counsel 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.

Outside Counsel 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 this Agreement and until two (2) years following termination or completion of services pursuant to this Agreement.

- a) Carrier Requirements: All insurance which Outside Counsel 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.
- b) Notice of Cancellation: In the event that Outside Counsel receives notice of intended cancellation of the above described Professional Liability Insurance policy, or that coverage limits will be reduced below \$1,000,000, Outside Counsel shall immediately provide written notice of same to ACTA and Co-General Counsel.
- c) Modification of Coverage: ACTA's Chief Executive Office, at his or her 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 Outside Counsel.
- d) Renewal of Policies: At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall furnish to ACTA a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Outside Counsel neglects or fails to secure or maintain the insurance required above, ACTA's Chief Executive Officer may, at his or her own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance will be deducted from the next payment due Outside Counsel.

H. Validity

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

I. Waiver

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any future breach of the provision or any breach of any other provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

J. Remedies Reserved to ACTA

The remedies reserved to ACTA shall be cumulative and additional to any other remedies provided in law or equity.

K. Authorization for Warranty

Outside Counsel represents and warrants that the signatory to this Agreement is fully authorized to obligate Outside Counsel and that all corporate acts necessary to the execution of this Agreement have been accomplished.

L. Changes and Written Amendment of Terms

Material changes to this Agreement shall only be effective upon the execution of a mutually-approved written amendment.

7. AUTHORIZED REPRESENTATIVES

ACTA's Co-General Counsel represents ACTA on all matters related to this Agreement.

8. NOTICES

The following addresses shall serve as the places to which notices and other correspondence between the parties shall be sent:

A. Outside Counsel: Seymour Everett, Esq.
Everett Dorey LLP
18300 Von Karman Ave., Suite 900
Irvine, California 92612

B. ACTA Co-General Counsel:

Long Beach Office of the City Attorney
411 West Ocean Blvd, 9th Floor
Long Beach, CA 90802
Attention: ACTA Co-General Counsel

Los Angeles Office of the City Attorney
Harbor Division
425 S. Palos Verdes Street
San Pedro, CA 90731
Attention: ACTA Co-General Counsel

C. ACTA: ACTA
Kevin Scott
Chief Financial Officer
3760 Kilroy Airport Way, Suite 200
Long Beach, California 90806

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.

9. EMPLOYMENT OF OTHER COUNSEL, SPECIALISTS OR EXPERTS

Outside Counsel will not employ or otherwise incur any obligation, pay other counsel, specialists or experts for services in connection with this Agreement without prior written approval of Co-General Counsel.

10. AUDIT AND INSPECTION OF RECORDS

For at least three years after completion of services under this Agreement or termination of this Agreement, Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement, shall maintain backup documentation to support all entries included in the monthly billing statement. Such backup documentation shall be maintained in an auditable format and in accordance with generally accepted accounting principles. ACTA, at its sole discretion, may, at any time up to three years beyond the completion of services or termination of this Agreement, audit Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement. Outside Counsel and any such third parties shall promptly and fully cooperate with the audit, including affording ACTA, Co-General Counsel and/or its auditors access to records and files maintained by Outside Counsel and the third party.

11. 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. Outside Counsel shall assist ACTA in implementing ACTA's Small Business Program 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.

12. MERGER

This Agreement supersedes all prior communications and all previous written and oral agreements, and shall constitute the complete and exclusive statement of understanding between ACTA, Co-General Counsel and Outside Counsel relating to the subject matter of this Agreement.

13. COMPLIANCE WITH APPLICABLE LAWS

Outside Counsel shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations.

14. 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.

15. TRADEMARKS, COPYRIGHTS, AND PATENTS

Outside Counsel 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 Outside Counsel in the performance of this Agreement.

16. PROPRIETARY INFORMATION

The Outside Counsel may not disclose to any party without ACTA's permission any information developed pursuant to this Agreement. ACTA will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to ACTA.

17. 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 Outside Counsel relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Outside Counsel 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, Outside Counsel is required to safeguard such information from access by unauthorized personnel.

18. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Outside Counsel declares that it has an authorized TIN. No payments will be made under this Agreement without a valid TIN.

19. NO ASSIGNMENT

This Agreement contemplates the personal professional services of Outside Counsel, 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 Outside Counsel. Neither this Agreement nor any interest therein may be assigned. Any attempt by Outside Counsel to assign or subcontract services

relating to this Agreement without prior written consent shall constitute a material breach of this Agreement.

20. INTEGRATION

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

21. SEVERABILITY

Should any part of this Agreement be found to be invalid, the remainder of this Agreement is to continue in full force and effect.

22. 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.

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IN WITNESS WHEREOF, the parties hereto have duly 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

EVERETT DOREY LLP

Date _____

By: _____
Seymour Everett, Partner

APPROVED AS TO FORM

_____, 2023
HYDEE FELDSTEIN SOTO, Los Angeles City Attorney

By: _____
Heather M. McCloskey, Deputy
ACTA Co-General Counsel

EXHIBIT A

EVERETT DOREY LLP AGREEMENT NO. C0908

A. The hourly rates for each authorized timekeeper shall not exceed the following amounts, as provided for each year of the agreement.

Authorized Timekeeper	Title	7/1/2023 to 6/30/2025	7/1/2025 to 6/30/2026	7/1/2026 to 6/30/2027	7/1/2027 to 6/30/2028
Seymour Everett	Partner	\$310	\$322	\$335	\$348
Samantha Dorey	Partner	\$310	\$322	\$335	\$348
Stacy Douglas	Partner	\$310	\$322	\$335	\$348
Christopher Lee	Partner	\$310	\$322	\$335	\$348
Diana Chao	Partner	\$310	\$322	\$335	\$348

B. The hourly rate for each timekeeper category shall not exceed the following amounts, as provided for each year of the agreement.

Timekeeper Category	7/1/2023 to 6/30/2025	7/1/2025 to 6/30/2026	7/1/2026 to 6/30/2027	7/1/2027 to 6/30/2028
Partner/Sr. Counsel	\$310	\$322	\$335	\$348
Associate	\$265	\$276	\$287	\$298
Paralegal	\$125	\$130	\$135	\$140

EXHIBIT B
SAMPLE INVOICE
 (Legal Firm Letterhead)

Alameda Corridor Transportation Authority
 Attention: Kevin Scott, CFO
 3760 Kilroy Airport Way, Suite #200
 Long Beach, CA 90806

Invoice #:

Invoice Date:

Invoice Period:
 Project Name/Matter Number:

Professional Services

<u>Date</u>	<u>Timekeeper</u>	<u>Position</u>	<u>Description of Services</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
Total Professional Services						\$ -

Expenses/Disbursements

<u>Date</u>	<u>Timekeeper</u>	<u>Position</u>	<u>Description</u>	<u>Amount</u>	<u>Rate</u>	<u>Total</u>
						\$ -
						\$ -
Total Expenses						\$ -

Total Invoice Amount \$ -

Total Cumulative Fees and Expenses Billed to
 Date on Project/Matter \$ -

I certify under penalty of perjury that the above invoice is just and correct according to the terms of ACTA Agreement No. _____ 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.

 Signature