

SECOND AMENDMENT TO AGREEMENT NO. C0885 BETWEEN  
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
AND RAILWORKS TRACK SERVICES LLC

THIS SECOND AGREEMENT to Agreement No. C0885 (“Second Amendment”) is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority, (“ACTA”), and RAILWORKS TRACK SERVICES LLC, an Indiana limited liability company, (“Contractor”).

WHEREAS, Agreement No. C0885 between ACTA and Contractor was entered into commencing May 1, 2019 and amended by that certain First Amendment to Agreement No. C0885, effective as of January 1, 2020, (collectively, the “Agreement”); and

WHEREAS, pursuant to such Agreement, Contractor provides required maintenance services for the Rail Corridor and Non-Rail Components; and

WHEREAS, the parties now desire to amend the Agreement to extend the term of the Agreement for an additional five (5) years, revise the definitions of “Allowed Markup” and “Local Administrative and Office Support Costs,” and modify ACTA’s audit rights.

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

1. Pursuant to Section 4.1 of the Agreement, the term of the Agreement is hereby extended for an additional term of five (5) years, commencing on April 14, 2024 and terminating at 11:59 p.m. Los Angeles time on April 15, 2029.
2. The definition of “Allowed Markup” is hereby deleted in its entirety and replaced with the following:

“**Allowed Markup**” means a percentage which shall be added to the costs and expenses actually incurred by Contractor in purchasing or providing equipment, materials, supplies and/or other Direct Costs, including the costs of subcontracting and vendor services, in connection with Contractor’s performance of the Services under this Agreement. This percentage shall equal 5 percent (5%) for labor, 5 percent (5%) for Subcontractors’ entire costs (including Subcontractors’ materials, equipment, and supplies), and 10 percent (10%) for materials (any items built into construction). The Allowed Markup shall not apply to Contractor’s Fully Burdened Labor Rates, Contractor-owned or leased vehicles and equipment, Services performed under this Agreement by an Affiliate of the Contractor, and Services transferred to a Subcontractor that were to be performed by the Contractor under the Approved Maintenance Plan unless otherwise approved by ACTA.”

3. The definition of "Local Administrative and Office Support Costs" is hereby deleted in its entirety and replaced with the following:

**"Local Administrative and Office Support Costs"** means costs of items such as office supplies, cleaning supplies, office equipment, computers and accessories, office furniture, photography equipment and accessories, cell phone service and phone accessories, telephone and internet services, postal & courier service and supplies, ice/water for the office, soda & coffee (and related supplies), food (including catering) for meetings/training sessions/holidays, marketing materials, auto cleaning supplies, gifts for safety awards, tools (including but not limited to hand tools, motorized, electrical, test devices, cordless, or any other tools which would be necessary to perform the "Services" as described in Article 6 of this agreement), and personal work boots. These costs shall be included in the Fully Burdened Labor Rates."

4. The last paragraph of Section 5.6.1 is hereby deleted in its entirety and replaced with the following:

"Each such invoice shall be in reasonable detail, shall include such supporting documentation as reasonably required by ACTA, and shall be subject to ACTA's audit rights as set forth in Section 13.3. Contractor shall attach to each such invoice signed timecards detailing the time each employee of Contractor spent performing Services under this Agreement and payroll registers for that time period. In the event that Contractor used subcontracting services during such period, Contractor shall also provide the information and documents required under Section 5.7 (including the invoice for subcontracting Services performed for the prior calendar month, which invoice shall be in the same form and contain the same information, as may be applicable, as required under this Section 5.6.1)."

5. Section 13.3 is hereby deleted in its entirety and replaced with the following:

**"13.3 Audit Rights.** At any time during the term of this Agreement and for a period of not less than three (3) calendar years after the termination of this Agreement, ACTA has the right to inspect and audit Contractor's statements, books and records with respect to Contractor's performance of Services under this Agreement. Contractor agrees to accept the results of ACTA's audit(s), including, but not limited to, when questioned or disputed costs are extrapolated or applied to the entire population or Contract Year, and to pay or reimburse ACTA for any amounts due under this

Agreement pursuant to such audit results. ACTA acknowledges and agrees, however, that the rates set forth in the Approved Maintenance Plan are negotiated rates that are not subject to audit; provided, however, that ACTA shall have the right to audit whether or not the correct rate was applied in such instance, and/or the correct number of hours were applied to such rate, and whether wages meet or exceed the minimum prevailing wage rate requirement. ACTA has the right to enter, or cause its agent to enter, Contractor's or Subcontractor's place of business (or such other facilities where such books or records are stored pursuant to Section 13.6) during normal business hours to perform such inspection and audit; provided, that ACTA shall give Contractor and Subcontractor reasonable prior notice of its desire to inspect such books and records at Contractor's or Subcontractor's place of business (or such other facilities where such books or records are stored). Contractor shall also cause similar audit provisions to be a part of any subcontract agreement into which Contractor shall enter into in connection with this Agreement."

6. Except as amended in this Second Amendment herein, all remaining terms and conditions of the Agreement remain in full force and effect.
7. Capitalized terms not otherwise defined herein shall have the meaning assigned thereto in the Agreement.
8. This Second Amendment shall be effective upon the date of execution by ACTA's Chief Executive Officer.

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement No. C0885 on the date next to their signatures.

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

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

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

Michael C. Leue, P.E.  
Chief Executive Officer

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

Secretary

RAILWORKS TRACK SERVICES LLC,  
an Indiana limited liability company

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

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

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

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

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

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

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

APPROVED AS TO FORM

\_\_\_\_\_, 2024  
Dawn McIntosh, Long Beach City Attorney

By \_\_\_\_\_  
Thomas Y. Oh, ACTA Co-General Counsel