

# **A G E N D A**

## **REGULAR MEETING**

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

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Meeting Date and Time:	October 10, 2024, 10:00 A.M.
Location:	Long Beach City College Liberal Arts Campus Board Room 4901 East Carson Street, Building T1100 Long Beach, CA 90808
The public may attend the meeting in person or view the meeting online via Zoom:	<a href="https://us02web.zoom.us/j/5622477111">https://us02web.zoom.us/j/5622477111</a> Meeting ID: 562 247 7111 Passcode: boardmtg

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#### **OPPORTUNITIES FOR THE PUBLIC TO ATTEND THE MEETING AND PROVIDE PUBLIC COMMENTS**

In-person comments may be provided at the meeting but will not be accepted via Zoom. Members of the public attending the meeting in person will be given an opportunity to address the Board on (1) any item on the agenda prior to the Board's consideration of that item, including the consent and closed session agendas; and (2) subjects within the subject matter jurisdiction of the Governing Board during Public Comment on Non-Agenda Items. Members of the public who wish to speak should complete a speaker card indicating the agenda item number on which they will comment or designate "general public comment" and return the card to the Board Secretary. Each speaker will be allowed to speak for up to 3 minutes per agenda item.

Written comments or materials may be submitted by emailing [publiccomment@acta.org](mailto:publiccomment@acta.org) or brought to the meeting. If you request to distribute documents to the Governing Board, please present the Board Secretary with twelve (12) copies. All written comments or materials submitted for the meeting will be entered into the official meeting minutes. For comments by email, please submit written comments prior to 3:00 pm on the day before the scheduled meeting. Comments submitted by email will be distributed to the Governing Board prior to the meeting and entered into the official meeting minutes.

As a covered entity under Title II of the Americans with Disabilities Act, the Alameda Corridor Transportation Authority (ACTA) does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities. Sign language interpreters, assistive listening devices, and translation services may be provided. To ensure availability, 72-hour advance notice is required. Contact the ACTA Office at (562) 247-7777.

#### **ROLL CALL**



**CLOSED SESSION**

Public Employee Performance Evaluation for Chief Executive Officer (Government Code Section 54957)

**OPEN SESSION****A. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS****B. REPORTS AND PRESENTATIONS**

- i. August 2024 Performance Report
- ii. ACTA Legislative Program

**C. APPROVAL OF THE MINUTES**

- Minutes of the August 15, 2024, Regular Governing Board Meeting of the Alameda Corridor Transportation Authority

**D. AGENDA ITEMS****Regular Agenda (1-4):**

1. Approve Agreement No. C0924 with DavCo Properties, LLC doing business as DavCo Realty Advisors to Provide Real Estate Brokerage Services for ACTA's Office Lease
2. APPROVE Twelfth Amendment to the Alameda Corridor Dispatching Agreement for a Term Extension of up to Two Years to October 14, 2026
3. APPROVE Eleventh Amendment to the Alameda Corridor Police & Security Services Agreement for a Term Extension of up to Two Years to October 14, 2026
4. DISCUSS AND APPROVE proposed adjustments to the ACTA Chief Executive Officer Salary and Benefits Package (JPA Resolution No. 24-3)

**ADJOURNMENT**

## **REPORT ITEM 1**

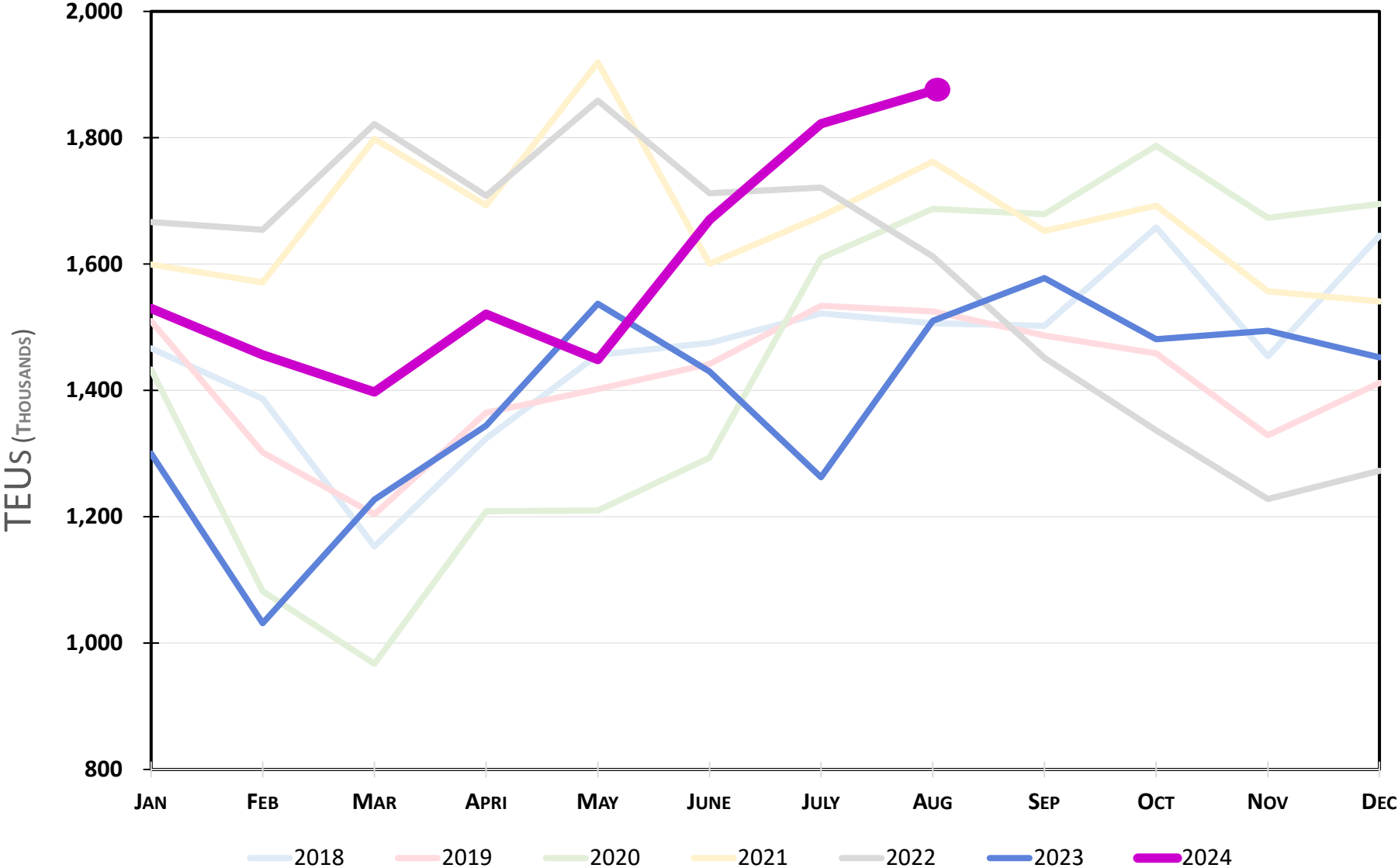
# **Performance Report AUG 2024**

## Port Container Throughput (TEUs) – Aug 2024

	POLA		POLB		Combined	
	Aug-24	%Change	Aug-24	%Change	Aug-24	%Change
Imports	509,362	17.6%	456,868	40.4%	966,230	27.4%
Exports	121,743	-2.6%	104,646	12.0%	226,389	3.7%
Total Loaded	631,105	13.1%	561,514	34.1%	1,192,620	22.1%
Empty	329,490	22.1%	352,360	33.7%	681,850	27.9%
Total	960,595	16.0%	913,874	33.9%	1,874,469	24.1%
	YTD	% Change*	YTD	% Change*	YTD	% Change*
Imports	3,477,052	18.8%	2,979,293	27.1%	6,456,345	22.5%
Exports	1,022,178	25.2%	786,029	-10.5%	1,808,207	6.7%
Total Loaded	4,499,230	20.2%	3,765,322	16.9%	8,264,552	18.6%
Empty	2,132,445	11.9%	2,322,560	31.1%	4,455,005	21.2%
Total	6,631,675	17.4%	6,087,882	21.9%	12,719,557	19.5%

\* Relative to same period in CY 2023

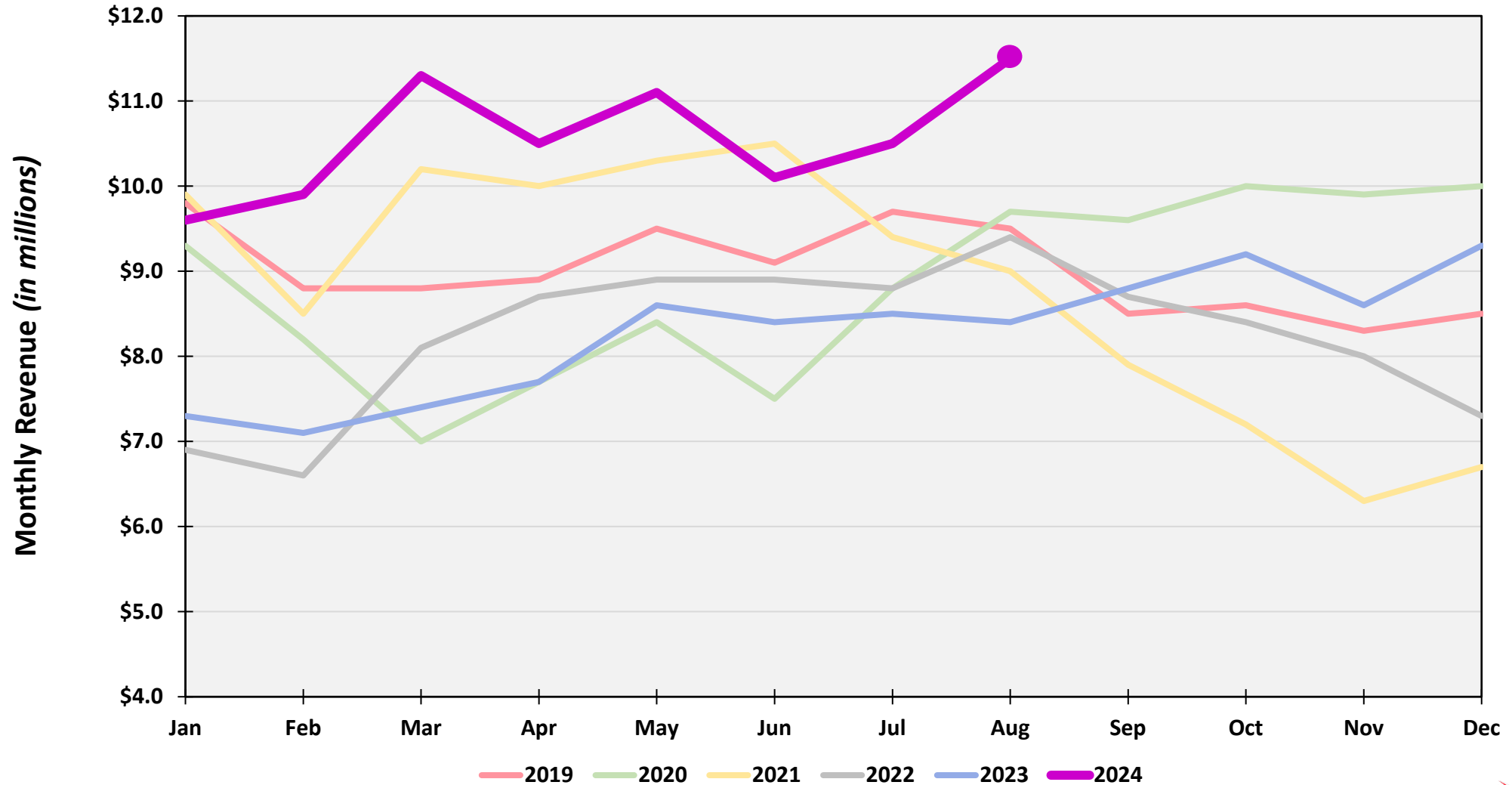
SP Bay Port TEUs Trends



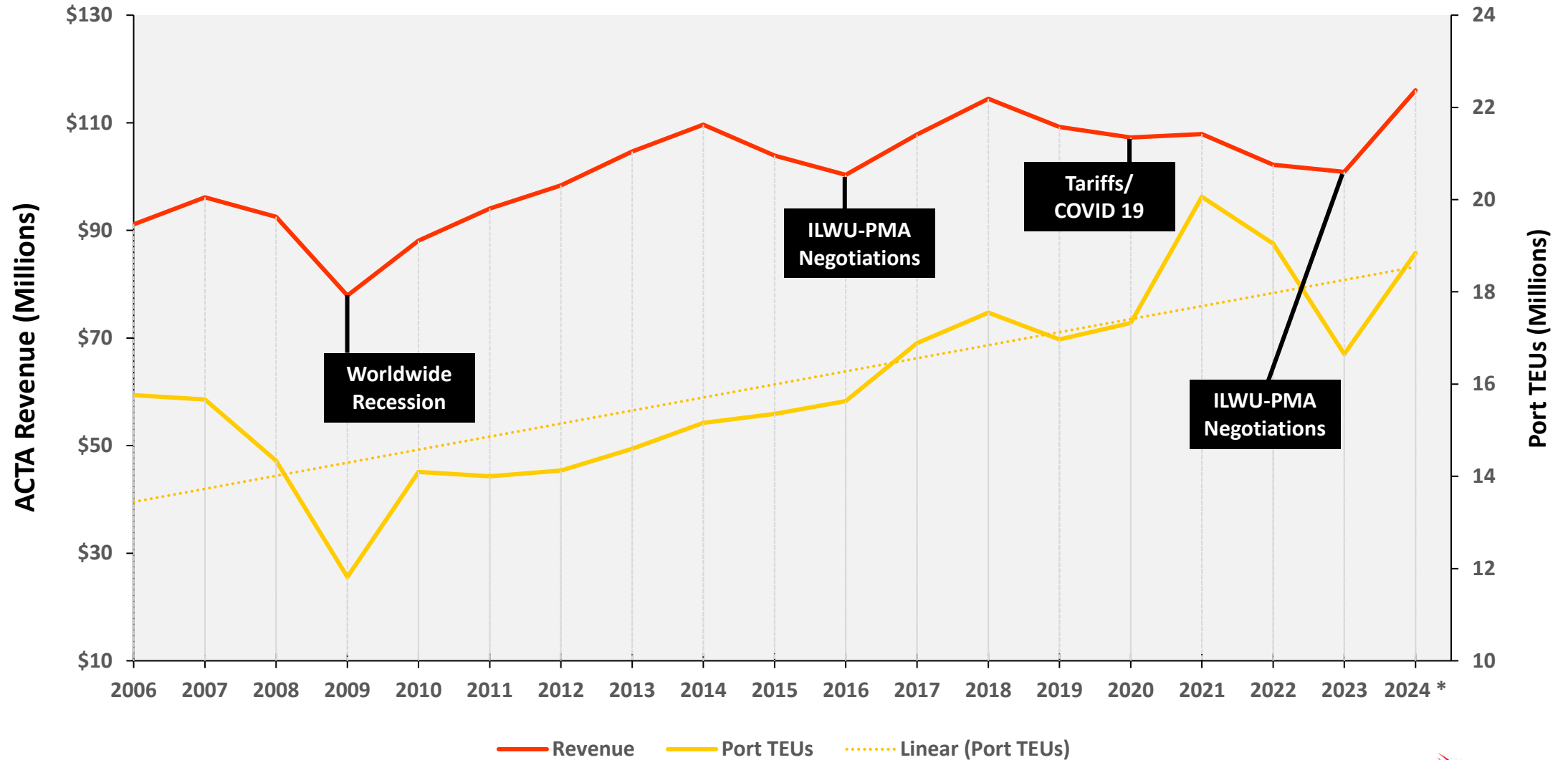
## Alameda Corridor Performance Aug 2024

	Aug 2024	CY24	FY25
Revenue	\$11.5 M	\$84.6 M	\$22.1 M
Change from 2023	37.1 %	33.2 %	30.6 %
TEU's	515,862	3,689,965	980,206
Change from 2023	37.8 %	30.3 %	29.8 %

# Corridor Revenue Performance CY2019 to CY2024



# ACTA Revenue & Port TEUS



\* Actuals through August 2024; remaining CY numbers from ACTA's forecast model



## **REPORT ITEM 2**

# **ACTA Legislative Program October 10, 2024**

# Discussion

The Legislative Program will focus ACTA efforts and facilitate collaboration between ACTA and other agencies to advance investment and policy strategies.

1. Finance – Working with financial advisors to evaluate alternatives  
Met with POLA & POLB financial staff  
Met with Ad Hoc Committee



Goal – Develop bond strategy that balances total cost, shortfalls, revenue forecast

Next Step – Obtain feedback from Ad Hoc Committee and bring to Board

2. State of Good Repair – First project is Signals/Communications

ACTA submitted CRISI grant application for \$34M project – selection pending

ACTA released MOW Contract RFP and conducted Pre-Proposal meeting (proposals due 11/13)



3. Security – Continue enhancement of security for infrastructure/cargo

ACTA sponsored area-specific task forces & camera deployment



MINUTES OF A REGULAR MEETING OF THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY GOVERNING BOARD HELD AT LONG BEACH CITY COLLEGE LIBERAL ARTS CAMPUS BOARD ROOM, 4901 E. CARSON STREET, BUILDING T1100, LONG BEACH, CALIFORNIA 90808 ON AUGUST 15, 2024 AT 10:00 A.M.

## **ROLL CALL**

Members present:

Michael Cano, Los Angeles County Metro

Frank Colonna, Port of Long Beach

Tim McOsker, City of Los Angeles

Alternate members present:

Michael DiBernardo, Port of Los Angeles

Sam Joumblat, Port of Long Beach

I. Lee Williams, Port of Los Angeles

Members absent:

Suely Saro, City of Long Beach

Also present:

Michael Leue, ACTA, Chief Executive Officer

Kevin Scott, ACTA, Chief Financial Officer

Graham Christie, ACTA, Chief Operating Officer

Heather McCloskey, ACTA, Co-General Counsel

Thomas Oh, ACTA, Co-General Counsel

Maria Melendres, ACTA, Governing Board Secretary

The meeting was called to order at 10:01 a.m. by Chair McOsker.

## **CLOSED SESSION**

None

## **OPEN SESSION**

### **B. REPORTS AND PRESENTATIONS**

- **MAY 2024 CORRIDOR PERFORMANCE**

Michael Leue presented the Corridor performance statistics through May 2024 and included some June and July 2024 information.

(Board Member Cano arrived at 10:05 a.m.)

- **ACTA LEGISLATIVE PROGRAM**

Michael Leue presented an update on ACTA's Legislative Program.

(Board Member Williams arrived at 10:13 a.m.)

- **ACTA BUDGET PROCESS AND ACTUAL EXPENDITURES**

In response to Commissioner Renwick's request at the June 20, 2024 Board meeting, Michael Leue presented information on ACTA's budget process and actual expenditures.

**A. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS**

There were no requests by the public to address the Governing Board.

**C. MINUTES**

ACTA GOVERNING BOARD REGULAR MEETING OF JUNE 20, 2024 – APPROVED.

Minutes of the Regular Meeting of June 20, 2024, of the Governing Board of the Alameda Corridor Transportation Authority, were presented to the Governing Board.

Board Member Colonna motioned, seconded by Board Member Cano that the minutes of the June 20, 2024, Regular Meeting of the Alameda Corridor Transportation Authority be approved as submitted. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joumbat, McOske, Williams

NOES: None

ABSENT: Saro

**D. AGENDA ITEMS**

**Consent Agenda**

**1. MONTHLY FINANCIAL REPORTS AS OF MAY 31, 2024 – RECEIVED AND FILED.**

Communication from Kevin L. Scott, Chief Financial Officer, dated August 15, 2024, recommending that the monthly financial reports as of May 31, 2024, be received and filed, was presented to the Governing Board.

No public comment was received on the Consent Agenda.

Board Member Colonna motioned, seconded by Board Member DiBernardo that Item No. 1 be received and filed. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joumbat, McOske, Williams

NOES: None

ABSENT: Saro

**Regular Agenda**

**2. RESOLUTION NO. JPA 24-1 – ACTA OFFICER POSITIONS – APPROVED AS AMENDED.**

Communication from Michael C. Leue, Chief Executive Officer, dated August 15, 2024, recommending the approval of Resolution No. JPA 24-1 to clarify and affirm the current ACTA Officer Positions, was presented to the Governing Board.

No public comment was received on Item No. 2.

Board Member Joumbat made a motion to approve the resolution to clarify and affirm the current ACTA Officers with a floor amendment directing staff to implement annual or biannual internal audit

controls reporting to the Audit Committee. The motion was seconded by Chair McOsker. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsker, Williams

NOES: None

ABSENT: Saro

3. ACTA OFFICER AND EMPLOYEE PUBLICLY AVAILABLE PAY SCHEDULE FOR FY 2024/2025 – APPROVED.

Communication from Kevin L. Scott, Chief Financial Officer, and Michael C. Leue, Chief Executive Officer, dated August 15, 2024, recommending the approval and adoption of the Publicly Available Pay Schedule for ACTA's Officers and Employees effective July 1, 2024, was presented to the Governing Board.

No public comment was received on Item No. 3.

Board Member Colonna motioned, seconded by Board Member DiBernardo that Item No. 3 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsker, Williams

NOES: None

ABSENT: Saro

4. AD HOC COMMITTEE FOR FINANCE PLANNING - APPROVED.

Communication from Michael C. Leue, Chief Executive Office and Kevin L. Scott, Chief Financial Officer, dated August 15, 2024, recommending the approval of the continuation of an Ad Hoc Committee for Finance Planning and Board member appointments, was presented to the Governing Board.

No public comment was received on Item No. 4.

The following nominations were made, Board Member Cano, Board Member Colonna and Board Member Renwick to serve on the Finance Planning Committee. Chair McOsker motioned, seconded by Board Member DiBernardo that the continuation of the committee be approved and to include the appointment of the nominated members. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsker, Williams

NOES: None

ABSENT: Saro

5. PACIFIC RAILWAY ENTERPRISES, INC. – THIRD AMENDMENT TO AGREEMENT NO. C0889 – RAILROAD SIGNAL AND COMMUNICATION DESIGN & SUPPORT SERVICES – APPROVED.

Communication from Graham M. Christie, Chief Operating Officer, dated August 15, 2024, recommending the approval of the Third Amendment to Agreement No. C0889 with Pacific Railway Enterprises, Inc. for an additional term of 3 years and additional compensation in the amount of \$4,000,000 for the continuation of signal design services and authorize the Chief Executive Office or his designee to execute the amendment, was presented to the Governing Board.

No public comment was received on Item No. 5.

Board Member Cano motioned, seconded by Board Member Joublat that Item No. 5 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsker, Williams

NOES: None

ABSENT: Saro

6. DAVCO PROPERTIES, LLC – REAL ESTATE BROKERAGE SERVICES FOR ACTA’S OFFICE LEASE – CONTINUED.

Communication from Kevin Scott, Chief Financial Officer, dated August 15, 2024, recommending the approval of Agreement No. C0924 with DavCo Properties, LLC doing business as DavCo Realty Advisors to provide Real Estate Brokerage Services for ACTA’s office lease, was presented to the Governing Board.

No public comment was received on Item No. 6.

After some discussion, Chair McOsker made a motion to (1) reject the proposal from DavCo Properties, LLC in light of the real estate rule change effective August 13, 2024, and direct staff to go back to the five proposers to ask for additional information in the fee & compensation structure incorporating the new rule; and (2) direct staff to contact the current lessor for information on renewal terms. The motion was seconded by Board Member Williams. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsker, Williams

NOES: None

ABSENT: Saro

(Board Member Colonna left the meeting at 11:13 a.m.)

7. WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC. –INSURANCE BROKERAGE SERVICES – AGREEMENT NO. C0925 – APPROVED.

Communication from Kevin L. Scott, Chief Financial Officer, dated August 15, 2024, recommending the approval of Agreement No. C0925 with Willis Towers Watson Insurance Services West Inc. for Insurance Services in an amount not to exceed \$500,000 for a five-year term; and authorize the Chief Executive Officer or his designee to execute said agreement, was presented to the Governing Board.

No public comment was received on Item No. 7.

Board Member Williams motioned, seconded by Board Member Joublat that Item No. 7 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsker, Williams

NOES: None

ABSENT: Saro

8. PIER B ON-DOCK RAIL SUPPORT FACILITY PROJECT – FINDING OF FACT, STATEMENT OF OVERRIDING CONSIDERATION, AND MITIGATION MONITORING AND REPORTING PLAN – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated August 15, 2024, recommending that the Governing Board (1) approve the Findings of Fact and Statement of Overriding Considerations; (2) adopt the mitigation measures contained in the Mitigation Monitoring and Reporting Plan that pertain to the construction and operations occurring within Alameda Corridor Transportation Authority jurisdiction of the certified Final Environmental Impact Report for the Pier B On-Dock Rail Support Facility Project; and (3) authorize the Chief Executive Officer or his designee to file the Notice of Determination with the Los Angeles County Clerk and the State Clearinghouse, was presented to the Governing Board.

No public comment was received on Item No. 8.

Board Member DiBernardo motioned, seconded by Board Member Cano that Item No. 8 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsler, Williams

NOES: None

ABSENT: Saro

9. PORT OF LONG BEACH PIER B ON-DOCK RAIL SUPPORT FACILITY LOCOMOTIVE FACILITY TURNOUT AND CROSSOVER CONNECTING TO THE ALAMEDA CORRIDOR – MEMORANDUM OF AGREEMENT – POLA, POLB, UP, BNSF & ACTA – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated August 15, 2024, recommending the approval of the proposed Memorandum of Agreement among the City of Los Angeles Harbor Department (POLA), the Port of Long Beach (POLB), Union Pacific Railroad Company (UP), BNSF Railway Company (BNSF) and ACTA for the On-Dock Rail Support Facility Locomotive Facility Turnout and Crossover Project; and authorize ACTA's CEO to execute and the Governing Board Secretary to attest to the MOA on behalf of the Governing Board, was presented to the Governing Board.

No public comment was received on Item No. 9.

Board Member DiBernardo motioned, seconded by Board Member Cano, that Item No. 9 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, DiBernardo, Joublat, McOsler, Williams

NOES: None

ABSENT: Saro

#### **ADJOURNMENT**


At 11:32 a.m., the meeting was adjourned sine die.

# M E M O

## *Alameda Corridor Transportation Authority*

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Meeting Date: October 10, 2024

From: Kevin Scott, Chief Financial Officer 

Subject: Approve Agreement No. C0924 with DavCo Properties, LLC doing business as DavCo Realty Advisors to Provide Real Estate Brokerage Services for ACTA's Office Lease

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### **Recommendation:**

Approve Agreement No. C0924 with DavCo Properties, LLC doing business as DavCo Realty Advisors (DavCo) for Real Estate Brokerage Services for a one-year term and no compensation; and authorize the Chief Executive Officer or his designee to execute said agreement.

At its meeting held on August 15, 2024, the Governing Board requested staff to determine whether certain new rules established by the National Association of Realtors (NAR) regarding the use of Multiple Listing Services and NAR member sales commissions had any impact on the proposed agreement. The new rules are the result of certain settlement terms in a class action lawsuit against NAR and impact only residential home sales. Commercial real estate sales and leases were not part of the class action lawsuit and they are not included in the new NAR rules (see <https://www.nar.realtor/the-facts/nar-settlement-faqs>, accessed September 6, 2024).


### **Discussion:**

In August of 2014, ACTA moved into its current offices at 3760 Kilroy Airport Way, Suite 200, through an approximately 5-year office lease with Kilroy Realty, L.P. This lease has a one-time 5-year renewal option which ACTA exercised in 2019. The amended lease expires July 31, 2025.

With the lease expiring in about a year, ACTA staff recommends hiring an independent firm to provide real estate brokerage services. These services will include conducting a search for potential commercial office space within a ten (10) mile radius of ACTA's current office (said search to include consideration of space in the current office complex); identifying potential cost savings or other real estate opportunities that may benefit ACTA; and negotiating lease terms for suitable commercial office space to meet ACTA's present needs.

In May 2024, ACTA published a Request for Proposals (RFP) for real estate brokerage services. ACTA advertised the RFP on social media via LinkedIn, posted the RFP on its website, and sent the RFP announcement directly to several firms. The Ports of Long Beach and Los Angeles also posted the RFP information on their respective contracting opportunity websites. Several firms registered to receive the RFP on the ACTA website, and five responses were received on or before the due date of June 11, 2024.

A three-member review panel consisting of ACTA's Chief Executive Officer, Chief Financial Officer and Chief Operating Officer reviewed and evaluated the responses. No firms were interviewed because the written proposals provided adequate information to evaluate the proposers. Each firm was evaluated on firm





qualifications; experience of proposed personnel and proposed compensation and fees. All three evaluators ranked DavCo first. As a result, the review panel recommends the Board approve the proposed agreement with DavCo to provide real estate brokerage services.

The agreement with DavCo will be for one year. DavCo will not receive compensation from ACTA for the proposed services. Commissions or fees offered for or negotiated by owners of suitable commercial office spaces for lease to procure a tenancy for ACTA shall be agreed to separately between DavCo and the owners. All such commissions shall be fully disclosed to ACTA.

**Budget Impact:**

There is no budget impact as there is no compensation from ACTA to DavCo.

**Co-General Counsel Review:**

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

**Transmittals:**

Transmittal 1 – Scoring and Ranking Matrix

Transmittal 2 – Real Estate Brokerage Services Agreement No. C0924

ACTA Real Estate Brokerage RFPEvaluation Summary10-Oct-24Evaluation Scores

<u>Proposer</u> <u>Designation</u>	<u>Eval</u> <u>1</u>	<u>Eval</u> <u>2</u>	<u>Eval</u> <u>3</u>	<u>Average Score</u>	<u>Score</u> <u>Rank</u>
1	55	70	50	58	5
2	85	70	80	78	3
3 DAVCO	95	90	95	93	1
4	80	90	75	82	2
5	80	65	65	70	4

AGREEMENT NO. C0924

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND DAVCO PROPERTIES, LLC DOING BUSINESS AS  
DAVCO REALTY ADVISORS

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 DAVCO PROPERTIES, LLC, a Delaware Limited Liability Company, doing business as DAVCO REALTY ADVISORS, ("Consultant") whose address is One World Trade Center, 8th Floor Long Beach, CA 90831.

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary basis to assist ACTA with leasing commercial office space in or near Long Beach, California; and

WHEREAS, Consultant 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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

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

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

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

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

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

## 2. SERVICES TO BE PERFORMED BY ACTA

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

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

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

## 3. EFFECTIVE DATE AND TERM OF AGREEMENT

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

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

1. One (1) year has lapsed from the effective date of this Agreement;

or

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

or

3. All parties hereto have performed to the satisfaction of ACTA.

4. RESERVED.

5. COMPENSATION AND PAYMENT

No compensation shall be paid by ACTA to Consultant for the services rendered pursuant to this Agreement. Commissions or fees offered for or negotiated by owners of suitable commercial office spaces for lease to procure a tenancy for ACTA shall be agreed to separately between the Consultant and said owners. All such commissions shall be promptly and fully disclosed to ACTA upon request.

6. RECORDKEEPING AND AUDIT RIGHTS

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

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

7. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ACTA. Consultant shall not

represent itself as an agent or employee of ACTA and shall have no power to bind ACTA in contract or otherwise.

8. INDEMNIFICATION

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

9. RESERVED.

10. TERMINATION PROVISION

The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon 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.

11. PERSONAL SERVICE AGREEMENT

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

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Section 1 of this Agreement. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this

Agreement or to impose any obligation on ACTA to such Subconsultant(s) or give the Subconsultant(s) any rights against ACTA.

12. AFFIRMATIVE ACTION

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

13. SMALL BUSINESS ENTERPRISE PROGRAM

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

14. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of ACTA. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ACTA relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, ACTA may immediately terminate this Agreement by giving written notice thereof.

15. COMPLIANCE WITH APPLICABLE LAWS

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

16. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

#### 17. TRADEMARKS, COPYRIGHTS, AND PATENTS

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

#### 18. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ACTA as soon as they are developed, whether in draft or final form. ACTA has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ACTA at all times owns rights provided for in this Section 18 free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ACTA the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ACTA, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to ACTA, its Board, officers, agents or employees, is not given in confidence. Accordingly, ACTA or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, ACTA shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any



activity now or hereafter engaged in or permitted by ACTA. Upon ACTA's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to ACTA. It is expressly understood and agreed that, as between ACTA and Consultant, the referenced license shall arise for ACTA's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ACTA may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by ACTA.

19. CONFIDENTIALITY

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

20. NOTICES

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

21. INTEGRATION

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

22. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

23. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

24. TITLES AND CAPTIONS

The parties have inserted the Section titles in this Agreement only as a matter of convenience and for reference, and the Section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

25. MODIFICATION IN WRITING

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

26. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

27. EXHIBITS; SECTIONS

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms

of the body of the Agreement shall control. References to Sections are to Sections of this Agreement unless stated otherwise.

## 28. COUNTERPARTS

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

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

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

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

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

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

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

By: \_\_\_\_\_  
Michael C. Leue, P.E.  
Chief Executive Officer

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

DAVCO PROPERTIES, LLC, doing  
business as DAVCO REALTY ADVISORS

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

By: \_\_\_\_\_  
David G. Coe

APPROVED AS TO FORM

\_\_\_\_\_, 2024  
DAWN MCINTOSH, Long Beach City Attorney

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

## **EXHIBIT A**

### **SCOPE OF WORK**

ACTA's office lease expires on July 31, 2025. ACTA wishes to secure either (i) a new lease for its current office space located at Aero Long Beach ("AERO"), 3760 Kilroy Airport Way, Suite 200, Long Beach, CA 90806, (ii) other office space within the AERO complex, or (iii) office space outside of the AERO complex but in or near Long Beach, California in the County of Los Angeles. At the direction of the Chief Executive Officer of ACTA, Consultant shall be responsible for providing the following services:

1. Provide expertise and experience in providing real estate brokerage services in securing commercial office space for ACTA employees;
2. Identify potential cost savings or other real estate opportunities that may benefit ACTA by conducting a review of the local market, comparable leases, and existing ACTA leases;
3. Conduct a search for potential commercial office space within a ten (10) miles radius of the current ACTA office and within Los Angeles County for suitable commercial office space for approximately 15 employees; and
4. Negotiate lease terms for suitable commercial office space needs that comply with all applicable laws and regulations needed for ACTA office space and the highest economic value and cost savings based on the present real estate market for commercial office space.

## EXHIBIT B

### **SMALL BUSINESS ENTERPRISE PROGRAM**

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


An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this Agreement, it has been determined that the percentage of required small business participation will be 0%.**

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement, where required, and for reporting to ACTA. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs.

# M E M O

## *Alameda Corridor Transportation Authority*

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To:	Governing Board
Meeting Date:	October 10, 2024
From:	Michael C. Leue, Chief Executive Officer 
Subject:	APPROVE the Twelfth Amendment to the Alameda Corridor Dispatching Agreement for a Term Extension of up to Two Years to October 14, 2026

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### **Recommendation:**

Approve the Twelfth Amendment to the Alameda Corridor Dispatching Agreement and Authorize the Chief Executive Officer to execute the proposed amendment. The amendment will extend the term of the Alameda Corridor Dispatching Agreement between ACTA, the BNSF Railway Company (BNSF), and Union Pacific Railroad Company (UP), for up to two years through October 14, 2026. Absent this extension, the Agreement will expire on October 14, 2024.

### **Discussion:**

The Amended and Restated Use and Operating Agreement (UOA) requires that the Port of Long Beach and Port of Los Angeles as owners of the Alameda Corridor property (referred to collectively in the UOA as “Owner”) and BNSF and UP (collectively the “Railroads”), through the process of Mutual Agreement set forth in the UOA, select a Corridor Dispatcher, and that ACTA endeavor to enter into an agreement with the selected entity on the business terms specified by the Owner and Railroads.

The existing Dispatching Agreement (Agreement) between ACTA and the Railroads has been in place since 2002 and will expire on October 14, 2024. The services provided under the Agreement are paid for directly by the Railroads. The original term of the Agreement was five years, as approved by the former Operating Committee (OC), and extended twice with OC approval for an additional 10 years via two amendments through October 14, 2017. Since that time, additional amendments to extend the term of the Agreement through October 14, 2024, have been approved by the Ports and Railroads through Mutual Agreement, approved by the ACTA Governing Board, and subsequently executed by ACTA and the Railroads.

The Twelfth Amendment to the Agreement will extend the term of the Agreement for up to two years through October 14, 2026. Through Notice of Mutual Agreement No. 2024-2, the Ports and Railroads approve the Twelfth Amendment.

ACTA Governing Board approval of the Twelfth Amendment is hereby requested to extend the term of the current Agreement until such time as either a new agreement is approved and executed, or through October 14, 2026, whichever is earlier. The Twelfth Amendment to the existing Agreement is attached as Transmittal 1.

**Budget Impact:**

The approved ACTA Operating Budget will not be impacted by the approval of the amendment.

**Co-General Counsel Review:**

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

**Transmittals:**

Transmittal 1 – Twelfth Amendment to the Alameda Corridor Dispatching Agreement



## **TWELFTH AMENDMENT TO ALAMEDA CORRIDOR DISPATCHING AGREEMENT**

**THIS TWELFTH AMENDMENT TO THE ALAMEDA CORRIDOR DISPATCHING AGREEMENT ("Amendment")** is made as of October 15, 2024, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (formerly known as The Burlington Northern and Santa Fe Railway Company) ("**BNSF**"), **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**"), and **THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority created under the laws of the State of California ("**ACTA**"), with reference to the following Recitals:

### **RECITALS**

**A.** Pursuant to that certain Amended and Restated Alameda Corridor Use and Operating Agreement dated as of December 15, 2016 (the "**Operating Agreement**"), by and among the City of Long Beach, the City of Los Angeles, ACTA, BNSF and UP, certain aspects of the operations on the Rail Corridor (as defined in the Operating Agreement) are governed by Owner and Railroads (as those terms are defined in the Operating Agreement), including dispatching services.

**B.** Pursuant to the Operating Agreement, BNSF and UP were selected by Owner and Railroads to jointly act as the Rail Corridor's dispatching services providers and to perform other duties specified in that certain Alameda Corridor Dispatching Agreement dated as of January 30, 2002 (as amended, the "**Agreement**") and entered into by BNSF, UP and ACTA. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Operating Agreement unless the Amendment clearly states otherwise.

**C.** BNSF, UP and ACTA desire to hereby modify and amend the Agreement, as more particularly set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, BNSF, UP and ACTA hereby agree as follows:

### **Section 1. Modification of Agreement**

**1.1** Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

**5.1 Commencement Date; Term.** The term of this Agreement, and Corridor Dispatcher's duties hereunder, commenced on April 15, 2002 ("**Commencement Date**") and unless earlier terminated as

## **TWELFTH Amendment to Alameda Corridor Dispatching Agreement**

provided herein, this Agreement shall automatically expire on the earlier of (i) October 14, 2026, or (ii) the date on which the Owner and Railroads, pursuant to Mutual Agreement, reappoint the Corridor Dispatcher or select a replacement corridor dispatcher and such corridor dispatcher has been engaged by ACTA and is able to commence performing dispatching services on the Rail Corridor.

### **Section 2. Counterparts.**

This Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one agreement.

[Signatures follow]

**TWELFTH Amendment to Alameda Corridor Dispatching Agreement**

**IN WITNESS WHEREOF**, the parties hereto have executed this TWELFTH Amendment as of the date first above written.

**“BNSF”**

**BNSF Railway Company**  
a Delaware corporation

Approved as to form this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2024

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**“UP”**

**Union Pacific Railroad Company**  
a Delaware corporation

Approved as to form this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2024

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

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

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

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

Its \_\_\_\_\_

Its: \_\_\_\_\_

**"ACTA"**

**Alameda Corridor Transportation Authority,**  
a Joint Powers Authority

Approved as to form this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2024

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

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

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

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


Its: \_\_\_\_\_

Its: \_\_\_\_\_

# M E M O

## *Alameda Corridor Transportation Authority*

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To:	Governing Board
Meeting Date:	October 10, 2024
From:	Michael C. Leue, Chief Executive Officer 
Subject:	APPROVE the Eleventh Amendment to the Alameda Corridor Police and Security Services Agreement for a Term Extension of up to Two Years to October 14, 2026

---

### **Recommendation:**

Approve the Eleventh Amendment to Corridor Police and Security Services Agreement and Authorize the Chief Executive Officer to execute the amendment, extending the term of the Alameda Corridor Police and Security Services Agreement between ACTA, the BNSF Railway Company (BNSF), and Union Pacific Railroad Company (UP), for up to two years through October 14, 2026. Absent this extension, the agreement will expire on October 14, 2024.

### **Discussion:**

The Amended and Restated Use and Operating Agreement (UOA) requires that the Port of Long Beach and Port of Los Angeles, as owners of the Alameda Corridor property (referred to collectively in the UOA as “Owner”) and BNSF and UP (collectively the “Railroads”), through the process of Mutual Agreement set forth in the UOA, select a Corridor Police and Security Services provider, and that ACTA endeavor to enter into an agreement with the selected entity on the business terms specified by the Owner and Railroads.

The existing Police and Security Services Agreement (Agreement) between ACTA and the Railroads has been in place since 2002 and will expire on October 14, 2024. The services provided under the Agreement are paid for directly by the Railroads. The original term of the Agreement was five years, as approved by the former Operating Committee (OC), and was extended twice with OC approval for an additional 10 years via two amendments through April 14, 2017. Since that time, additional amendments to extend the term of the Agreement through October 14, 2024 have been approved by the Ports and Railroads through Mutual Agreement, approved by the ACTA Board and subsequently executed by ACTA and the Railroads.

The Eleventh Amendment to the Agreement will extend the term of the Agreement for up to two years through October 14, 2026. Through Notice of Mutual Agreement No. 2024-3, the Ports and Railroads approve the Eleventh Amendment.

ACTA Governing Board approval of the Eleventh Amendment is hereby requested to extend the current Agreement until such time as either a new agreement is approved and executed, or through October 14, 2026, whichever is earlier.

The Eleventh Amendment to the existing Police and Security Services Agreement is attached as Transmittal 1.



**Budget Impact:**

The approved ACTA Operating Budget will not be impacted by the approval of this amendment.

**Co-General Counsel Review:**

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

**Transmittals:**

Transmittal 1 – Eleventh Amendment to the Alameda Corridor Police and Security Services Agreement

**ELEVENTH AMENDMENT TO  
ALAMEDA CORRIDOR POLICE AND SECURITY SERVICES AGREEMENT**

**THIS ELEVENTH AMENDMENT TO ALAMEDA CORRIDOR POLICE AND SECURITY SERVICES AGREEMENT** (this "**Amendment**") is made as of October 14, 2024, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (formerly known as The Burlington Northern and Santa Fe Railway Company) ("**BNSF**"), **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**"), and **THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority created under the laws of the State of California ("**ACTA**"), with reference to the following Recitals:

**RECITALS**

**A.** Pursuant to that certain Amended and Restated Alameda Corridor Use and Operating Agreement dated as of December 15, 2016 (the "**Operating Agreement**"), by and among the City of Long Beach, the City of Los Angeles, ACTA, BNSF and UP, certain aspects of the operations on the Rail Corridor (as defined in the Operating Agreement) are governed by Owner and Railroads (as those terms are defined in the Operating Agreement), including police and security services.

**B.** Pursuant to the Operating Agreement, BNSF and UP were selected by Owner and Railroads to jointly act as the Rail Corridor's police and security services providers and to perform other duties specified in that certain Alameda Corridor Police and Security Services Agreement dated as of October 15, 2002 (as amended, the "**Agreement**") and entered into by BNSF, UP and ACTA. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Operating Agreement unless the Amendment clearly states otherwise.

**C.** BNSF, UP and ACTA desire to hereby modify and amend the Agreement, as more particularly set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, BNSF, UP and ACTA hereby agree as follows:

**Section 1. Modification of Agreement.**

- 1.1** Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

## **ELEVENTH Amendment to Alameda Corridor Police and Security Agreement**

**5.1 Commencement Date; Term.** The term of this Agreement, and Corridor Security Provider's duties hereunder, commenced on April 15, 2002 ("**Commencement Date**") and unless earlier terminated as provided herein, this Agreement shall automatically expire on the earlier of (i) October 14, 2026, or (ii) the date on which the Owner and Railroads, pursuant to Mutual Agreement, revise the roles and responsibilities of the corridor security provider or select a replacement corridor security provider and such corridor security provider has been engaged by ACTA and is able to commence performing security services on the Secured Facilities.

### **Section 2. Counterparts.**

This Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one agreement.

[Signatures follow]

**ELEVENTH Amendment to Alameda Corridor Police and Security Agreement**

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date first above written.

**“BNSF”**

**BNSF Railway Company**  
a Delaware corporation

Approved as to form this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2024

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**“UP”**

**Union Pacific Railroad Company**  
a Delaware corporation

Approved as to form this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2024

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**"ACTA"**

**Alameda Corridor Transportation Authority,**  
a Joint Powers Authority

Approved as to form this \_\_\_\_\_ Day of  
\_\_\_\_\_, 2024

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_




# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board

Meeting Date: October 10, 2024

From: Kevin L. Scott, Chief Financial Officer 

Subject: DISCUSS AND APPROVE proposed adjustments to the ACTA Chief Executive Officer Salary and Benefits Package (JPA Resolution No. 24-3)

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### **Recommendation:**

The Governing Board conducted a performance evaluation for the Chief Executive Officer in Closed Session at its meeting held on October 10, 2024 in accordance with its intention to perform evaluations annually.

The Governing Board will discuss and vote in Open Session on any adjustments to the CEO salary and benefits package, and the effective dates for any approved adjustments.

### **Discussion:**

The Governing Board appointed Michael Leue as Chief Executive Officer (CEO) at its meeting held on March 12, 2020. The Governing Board conducted its first performance evaluation for Mr. Leue in closed session during its July 21, 2022 meeting, and subsequently on July 13, 2023.

The Governing Board may discuss in open session modifications to the CEO's annual salary through merit increase and/or a cost-of-living adjustment. In addition, the Governing Board may discuss in open session modifications to the CEO's annual automobile allowance. The Governing Board may vote on any motions made by Board Members resulting from such discussions. The effective dates for any adjustments should be included in the proposed motions for approval. A draft resolution for adjustments to the CEO's salary is set forth in Transmittal 1, and any increases approved by the Governing Board will be inserted into the resolution.

The CEO's current compensation includes an annual salary of \$335,131 and an annual automobile allowance of \$5,979. ACTA's Publicly Available Pay Schedule for the CEO salary is a minimum of \$236,896 and maximum \$352,838 per annum. The maximum in the Publicly Available Pay Schedule limits the increase in CEO salary to 5.28 percent.

The ACTA budget for FY 2024-2025 allowed for a 5.4 percent increase in the CEO salary, pending evaluation of the Governing Board. For reference, the Governing Board approved staff salary budget increases of 3% merit and 2.4% cost-of-living for fiscal year 2024-2025, which was included in the ACTA Budget.

**Budget Impact:**

ACTA's approved FY25 annual budget includes a 5.4 percent increase in CEO salary. The Governing Board may approve an increase for the CEO's current salary for merit and/or cost-of-living adjustments. In addition, the approved FY25 annual budget allows for an increase in the CEO's annual automobile allowance of 25% (\$1,495).

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed the draft Resolution, and upon Governing Board approval of adjustments to the CEO salary or benefits package and completion of the Resolution, will approve it as to form.

**Transmittals:**

Transmittal 1 – Resolution No. JPA 23-4

Resolution No. JPA 24-3

APPROVAL OF COMPENSATION INCREASE  
FOR THE CHIEF EXECUTIVE OFFICER  
OF THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY

WHEREAS, the Governing Board appointed Michael Leue as Chief Executive Officer of ACTA on March 12, 2020; and

WHEREAS, on July 21, 2022, the Governing Board conducted a closed session review of Mr. Leue's performance as CEO and in open session approved a 4% merit increase and a 3.5% cost-of-living adjustment to his compensation and a 3% car allowance increase; and

WHEREAS, on July 13, 2023, the Governing Board conducted a closed session review of Mr. Leue's performance as CEO and in open session approved a 3% merit increase and a 4.5% cost-of-living adjustment to his compensation and a 7.5% car allowance increase; and

WHEREAS, the Chief Executive's current annual compensation is \$335,131 with an annual car allowance of \$5,979; and

WHEREAS, the ACTA Governing Board met in closed session on October 10, 2024, to evaluate Mr. Leue's performance as CEO during the period from July 12, 2023 through June 30, 2024; and

WHEREAS, the Governing Board discussed and voted upon the CEO compensation adjustments set forth in this Resolution during the open session of its meeting held on October 10, 2024; and

WHEREAS, the Governing Board acknowledges and values Mr. Leue's leadership and dedication during the past year where Mr. Leue has \_\_\_\_\_; and

WHEREAS, the CEO compensation adjustments set forth in this Resolution are within the Publicly Available Pay Schedule for the CEO position approved by the Governing Board at its meeting held on August 15, 2024 and within the FY 2024-2025 ACTA Operating Budget;

NOW THEREFORE BE IT RESOLVED that the Governing Board of ACTA does hereby approve a merit adjustment in the amount of \_\_\_% and a cost-of-living adjustment in the amount of \_\_\_%, both effective July 1, 2024; and a car allowance adjustment in the amount of \_\_\_%, effective July 1, 2024, for the Chief Executive Officer of ACTA.

AYES:

NOES:

ABSENT:

I HEREBY CERTIFY THAT the foregoing  
resolution was adopted by the ACTA  
Governing Board on at its meeting held on  
October 10, 2024

\_\_\_\_\_  
Maria M. Melendres  
Board Secretary

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2024  
HYDEE FELDSTEIN SOTO, Los Angeles City Attorney  
By \_\_\_\_\_  
Heather M. McCloskey, Deputy  
ACTA Co-General Counsel