

AGREEMENT NO. CO886

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC.

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 WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC., a California corporation, whose address is 18101 Von Karman Avenue, Suite 600, Irvine, California, 92612 ("Consultant").

WHEREAS, ACTA requires various types of insurance coverage to mitigate risk exposure for its operations, and as well as for the protection of interests in ACTA's operations held by the Port of Los Angeles, the Port of Long Beach, the railroads operating on the corridor and other interested parties; and

WHEREAS, ACTA requires the professional, expert and technical services of Consultant to assist ACTA in identifying and assessing ACTA's risk exposure and determining the need for insurance as a risk-financing tool; and

WHEREAS, Consultant possesses extensive experience in analyzing insurance provider policies and recommending insurance programs to address property and liability risks; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to ACTA;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. 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.

## II. 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 Article IX (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.

## III. 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 upon authorization of the Board.

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. Five (5) years have lapsed from the effective date of this Agreement;

or

2. The Board, in its 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.

#### IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

Pursuant to Section 5 of ACTA's Amended and Restated Joint Exercise of Powers Agreement, ACTA shall be restricted in its powers in the same manner as the City of Los Angeles is restricted in its exercise of similar powers. Therefore, this Agreement is subject to the provisions of the Los Angeles City Charter Section 320 which precludes ACTA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

ACTA, its board, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

#### V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ACTA shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum amount payable under this Agreement, including reimbursable expenses, shall be Four Hundred Twenty-Five Thousand Dollars (\$425,000).

C. Consultant shall submit invoices in duplicate to ACTA quarterly following the effective date of this Agreement for services performed during the preceding quarter (i.e. three months). Each such invoice shall be signed by the Consultant and shall include the following certification:

“I certify under penalty of perjury that the above invoice is true and just, in accordance with the terms of Agreement No. CO886, that payment of this invoice has not been received and that none of the items contained in the invoice have been submitted to any other agency.

\_\_\_\_\_  
”  
(Consultant’s Signature)

D. All invoices shall be approved by ACTA’s CEO or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of ACTA business, the same may be approved, audited and processed.

Invoices shall include the Agreement number, employee name, title/classification, hourly rate, hours worked, current charges and cumulative charges. Subconsultant invoices shall be in a similar format. Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. ACTA may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to ACTA, with each quarterly invoice, a Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Where applicable, Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Subconsultant Monitoring Report Form.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Department  
Alameda Corridor Transportation Authority  
3760 Kilroy Airport Way, Suite 200

VI. 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. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

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 Article V 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.

VII. 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.

VIII. 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.

## IX. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VIII, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

### (1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

### (2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of

suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as additional insureds.

(3) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against ACTA in any circumstance in which it is alleged that actions or omissions of ACTA contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

(4) Professional Liability Insurance

Consultant 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.

Consultant certifies that it now has professional liability insurance in the amount of Ten Million Dollars (\$10,000,000) per claim and in the aggregate, 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 said Agreement and until two (2) years following completion or termination of the Agreement.

B. Insurance Procured by Consultant on Behalf of ACTA

Where Consultant is required to name ACTA, its Board, officers, agents and employees as additional insureds on any insurance policy required by this Agreement, Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent). It is further agreed that such insurance as is afforded by Consultant shall be Non-Contributory with any other insurance in force or which may be purchased by all Additional Insureds but solely as respects liability arising out of Consultant's operations or work being performed in connection with this Agreement.

Consultant shall provide notice of occurrences or claims relating to ACTA under the policy shall be made to ACTA's CEO with copies sent to ACTA's Co-General

Counsel at the following addresses; 1) Office of the Long Beach City Attorney, 333 West Ocean Boulevard, 11<sup>th</sup> Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731.

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article IX shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Consultant's insurance broker or agent shall submit to ACTA the appropriate proof of insurance on Consultant's behalf.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ACTA except for Professional Liability/Errors and Omissions insurances that are currently underwritten by the Consultant's Captive Insurer, which has not been rated by A.M. Best Company or other National Recognized Rating Organization (NRRO).

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice to ACTA. Consultant shall immediately upon learning that any of Consultant's required insurance policies are being cancelled for any reason, take immediate steps to reinstate or replace the required insurance prior to the effective date of cancellation and will send ACTA evidence of the reinstatement or replacement of the required insurance evidencing no lapse in coverage.

(4) Modification of Coverage

ACTA's CEO, at his sole reasonable discretion, based upon recommendation of independent insurance consultants to ACTA, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

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(5) Renewal of Policies

Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to ACTA a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, ACTA's CEO may, at his or her own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

X. 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 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.

XI. 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 Article I. 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.

XII. 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.

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### XIII. 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 D, 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.

### XIV. 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.

### XV. 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.

### XVI. 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.

### XVII. 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.

#### XVIII. 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 Article 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.

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## XIX. 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.

## XX. 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.

## XXI. 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.**

## XXII. 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.

### XXIII. 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.

### XXIV. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article 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.

### XV. 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.

### XVI. 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.

### XVII. EXHIBITS; ARTICLES

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 Articles are to Articles of this Agreement unless stated otherwise.

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XVIII. COUNTERPARTS

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

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: \_\_\_\_\_

John T. Doherty, P.E.  
Chief Executive Officer

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

Secretary

WILLIS TOWERS WATSON  
INSURANCE SERVICES WEST, INC.

Date: Sept 5, 2019

By: *Bryan Fitzpatrick*

Name: Bryan Fitzpatrick

Title: Executive Vice President

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

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

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

APPROVED AS TO FORM

\_\_\_\_\_, 2019  
Michael N. Feuer, Los Angeles City Attorney

By \_\_\_\_\_  
Heather M. McCloskey, Deputy  
ACTA Co-General Counsel

**EXHIBIT A**

**SCOPE OF WORK**

The Scope of Work includes, but is not limited to, the following services:

1. Assist in identifying and assessing the magnitude of ACTA risks and in determining the need for insurance as a risk-financing tool. Monitor ACTA operations and loss exposures and make any appropriate recommendations for coverage changes or new coverages.
2. Perform all on-site inspections and data gathering necessary to prepare underwriting submissions to insurance markets.
3. Recommend an overall program structure to address ACTA's property and liability risks.
4. Develop a marketing program and strategy that includes, at a minimum, the following:
  - a. Develop appropriate specifications for coverages, based on input provided by ACTA, that provides for broad protection of ACTA's assets in accordance with generally accepted standards within the insurance and risk management industries subject to any constraints and limitations imposed by ACTA.
  - b. Identify and present the specifications to a wide array of qualified, financially sound insurance markets.
  - c. No less than ten (10) days before the renewal date, prepare and present a written comprehensive proposal showing markets contacted, indications or price quotes offered, declinations with reasons for declination given and comments on underwriter reaction to the risk.
  - d. Evaluate insurer proposals and present results of the analysis in report form. Recommend the best risk financing solution including appropriate coverage, policy limits, and risk-financing structure. Provide support for recommendations.
  - e. Negotiate with underwriters on terms and conditions to obtain the most beneficial coverages available to ACTA based on input provided by ACTA. Include ACTA representatives in negotiation as requested.
5. Verify the accuracy of rates and premiums. Assist in establishing estimated costs and payrolls for premium calculations.
6. Provide specimens of all policies no less than ten (10) days prior to renewal or placement.
7. Use best efforts in working with carriers to deliver binders on or before the effective date of coverage being placed, subject to placement.
8. Assist ACTA in obtaining policies promptly once bound, i.e., in 90 days or less.
9. Review policies, binders, and endorsements in detail within 15 days of receipt to verify the wording and accuracy of each. Verify that policies meet agreed provisions and do not contain errors. Confirm that all negotiated coverage enhancements are provided and obtain revisions in such documents when needed. Promptly submit originals of all policies and endorsements to ACTA, with a sheet bearing the signature of the person responsible for policy review.
10. Provide coverage summaries for all new placements and updates on changes to existing policies as part of the written report identified in Paragraph 4c.

11. Process requests for additions or deletions to policies within five business days of receipt. Provide ACTA with copies of initial correspondence to the insurer or intermediary, if any. Follow up every two weeks from request date until a response is received, and the action is completed.
12. Provide ACTA with detailed invoices that have been verified for accuracy, except in the case of direct billing by insurers. Remit premiums to insurers and taxes and fees to the relevant parties on a timely basis, following receipt thereof from ACTA.
13. Coordinate services provided by insurance carriers including safety, claims adjusting, management information reporting, case management, health care provider selection and others.
14. Provide within 30 days, if requested from time to time by ACTA, insurance quotations for additional insurance coverages such as pollution (cost cap, PLL), railroad protective liability, builder's risk, etc.
15. Assure that all coverages are placed with financially responsible insurers. Monitor published financial information of ACTA's insurers and alert ACTA when the status of one or more of such insurers falls below agreed upon minimum financial guidelines. Broker is not obligated to guarantee the financial solvency of carriers.
16. Provide loss control assistance as requested subject to agreed upon budget limitations. At a minimum, organize and conduct loss control meetings with insurance companies as needed and as agreed with ACTA; if and when meetings are required, they will be initiated by ACTA.
17. Assist in the adjustment and settlement of claims and losses as follows:
  - a. Advise on coverage application to specific loss situations.
  - b. Assist in the development of settlement strategies.
  - c. Assist with the development of proofs of loss, accounting reports and other insurer required information and with the filing and processing of all claims.
  - d. Notify applicable excess insurers of claims as appropriate.
  - e. Assist with litigation management issues that impact claim settlement.
  - f. Maintain contact with insurers on the status of claims.
18. Assist in claim review and monitoring as follows:
  - a. Assist with review of claim reserves and represent ACTA to the insurer with regard to requested explanation or reduction of reserve amounts. Follow up with insurer every 30 days until resolution of reserve reduction requests or until the claim is closed.
  - b. Provide quarterly claim status reports that show status of open claims, adjuster or attorney assigned, reserves, expected outcomes, expected settlement or payment date and other appropriate summary information.
  - c. By June 30<sup>th</sup> of each year, obtain and provide annual loss run summaries by policy year for each of the previous five years indicating losses by type for each line of coverage.
  - d. Follow up with the insurer subrogation department to assure that collection efforts are maintained and coordinated with ACTA.

- e. Provide information as needed to assist ACTA in subrogation efforts within retentions or for losses not covered by insurance.
19. Cooperate in any transition to another Broker at the expiration of the Agreement. Deliver all data/documents as set forth herein.
20. Promptly respond to ACTA's questions related to coverage placed by Broker or the placement process.
21. Answer questions or obtain answers from underwriters for policy coverage questions, including written responses when requested.
22. Process or facilitate the processing and delivery of certificates or memoranda of insurance and auto identification cards with respect to insurance policies placed by Broker, as requested by ACTA. Normal requests should be responded to within 24 hours on work days.
23. Review premium and exposure audits, rating adjustments, dividend calculations and loss data.
24. Attend meetings with ACTA staff, Governing Board and railroads as requested, but no less than five (5) meetings per policy renewal period.
25. Prepare periodic reports as required including, at a minimum, an annual stewardship report to be submitted no less than 90 days prior to ACTA's major renewal date (see next item).
26. On or before January 31, provide written annual service summary for the policy year to include:
  - a. A schedule of coverage showing nature of coverage, limits, deductibles, insurer, policy number, premium and other relevant information.
  - b. Anticipated renewal terms and conditions and other indications of market conditions, trends and anticipated changes.
  - c. A renewal strategy to provide ACTA with the maximum premium reduction according to market movement.
  - d. Identified problem areas such as claim handling, safety hazards, insurer financial problems, etc.
  - e. Recommendations for improved program design.
  - f. Services performed for the current year and planned for the next year.
  - g. A forecast of market conditions and renewal costs and in conjunction with ACTA's budget process.
  - h. Accounting of income received on this account.
  - i. Commentary on any other developments or issues important to ACTA.
  - j. Renewal application

**EXHIBIT B**

**COMPENSATION**

**I. Annual Compensation**

For the services provided by Broker, including all time and expenses, ACTA shall pay Broker an annual fee of **\$70,000**, to be invoiced and paid in quarterly installments of \$17,500 starting ninety days from the effective date of the Agreement. Broker shall submit invoices on a quarterly basis during the term of the Agreement. Neither Broker nor any proprietary, affiliated, or subsidiary entity of Broker shall receive other compensation for services under the Agreement unless authorized in writing by ACTA or as authorized in Section II below.

**II. Performance Evaluation Compensation**

In addition to the base annual fee, ACTA may pay Broker up to an additional \$15,000 annually based on Broker's performance during the prior year period. In September of the year after the effective date of the Agreement, and each September thereafter while the Agreement is in force, ACTA shall evaluate Broker's performance in five areas and award points based on such performance, as follows:

1. Meetings: Broker shall conduct five meetings with ACTA each year including a pre-proposal strategy meeting and a proposal presentation meeting. Each meeting after the first one shall be awarded one point: 1 meeting – zero points; 2 meetings – one point; 3 meetings – two points; 4 meetings – three points; and 5 meetings – four points.
2. Renewal applications: Broker shall provide ACTA with all pre-completed renewal applications by January 31 during each year the Agreement is in force. 4 points shall be awarded for Broker providing all renewal applications by January 31 and thereafter ACTA shall deduct one point for each two (2) full days Broker fails to provide ACTA with the pre-completed renewal applications. Renewal applications submitted during any two (2) day late period shall not result in a point deduction for that two (2) day period.
3. Proposal: Each year Broker shall provide to ACTA a comprehensive renewal proposal at a meeting no less than ten (10) days before the policies annual renewal dates. Broker shall receive one point for each two (2) days prior to the ten (10) day proposal deadline as follows: one point for submittal twelve (12) days prior; two points for submittal fourteen (14) days prior; three points for submittal sixteen (16) days prior; and four points for submittal eighteen (18) days or more prior to the due date.
4. Premiums: Each year at renewal, Broker shall strive to reduce the total premium cost for comparable coverage by two percent (2%). One point shall be awarded for each half percentage reduction in total premium cost.
5. Policy Delivery: Broker shall deliver all policies no later than ninety (90) days after the renewal date for each policy and shall receive one point for each ten (10) days of early delivery after the renewal date; delivery within 40 days of renewal shall award four points; delivery within 50 days of renewal shall award three points; delivery within 60 days of renewal shall award two points; delivery within 70 days of renewal shall award one point; and delivery 71+ days after the renewal date shall award zero points.

ACTA and Broker agree that the foregoing evaluation process is based upon all of ACTA's insurance policies renewing at the same time. In the event that any insurance policy deviates from other policies with respect to renewal dates, ACTA shall have the right to assign the evaluation of Broker's performance to the insurance policy or policies of its choice for the purpose of determining what, if any, additional compensation is owed each year.

Each point shall be valued at Seven-Hundred-Fifty Dollars (\$750). Twenty (20) points shall be the maximum possible award for each evaluation period for a total additional compensation of up to Fifteen thousand dollars (\$15,000). After ACTA evaluates Broker's performance each year using the form attached hereto as Attachment B-1, Broker shall submit an invoice to ACTA in the amount based on the total score awarded by ACTA. ACTA will issue payment in 30 days after receiving an acceptable invoice.

### **III. Additional Terms and Conditions Regarding Compensation**

Broker will not accept any commissions, including contingent commissions, in connection with the placement of ACTA's policies under this agreement. If policies cannot be issued net of commission or Broker cannot exclude ACTA's policies from any contingent commission agreement that Broker may have with insurance underwriters, ACTA hereby consents that Broker may bind policies and Broker will disclose to ACTA, upon the earlier of the date the policy is delivered to ACTA or thirty days after binding of the policy, any commissions, including, to the extent it may be estimated, any contingent commissions earned pursuant to this Agreement and credit those commissions, at the time applicable premiums are billed, against the annual fee paid hereunder, unless prohibited by law.

In circumstances where certain insurance products are not available in the retail insurance market, it may be beneficial to ACTA to include in the insurance transaction wholesale Brokers or other intermediaries who can make available specialized insurance products. If any such intermediary is used on ACTA's account, Broker will disclose to ACTA prior to the initial binding, if the information is known at the time of binding, or as soon after initial binding as practicable if the information is not known at the time of binding, the compensation that Broker (and its affiliate, if applicable) will receive and Broker's relationship with the intermediary. Additionally, upon request, Broker will provide a written explanation to ACTA why the intermediary was used.

**In the event an insurance policy is terminated prior to the end of any policy year, a pro rata portion of the compensation paid to Broker in this Agreement shall be returned to ACTA in the amount equivalent to the return of any premiums paid by ACTA for such cancelled policy.**

# **Attachment B-1**

## ACTA Insurance Broker Performance Scoresheet (20 Points Maximum)

	Services	Maximum Possible Points	Agreement Criteria		Points Earned
1	Meetings	4	Broker shall conduct five meetings with ACTA each year including a pre-proposal strategy meeting and a proposal presentation meeting. Each meeting after the first one shall be awarded one point: 1 meeting – zero points; 2 meetings – one point; 3 meetings – two points; 4 meetings – three points; and 5 meetings – four points.	Meeting 1: Meeting 2: Meeting 3: Meeting 4: Meeting 5:	
2	Renewal Applications	4	Broker shall provide ACTA with all pre-completed renewal applications by January 31 during each year the Agreement is in force. 4 points shall be awarded for Broker providing all renewal applications by January 31 and thereafter ACTA shall deduct one point for each two (2) full days Broker fails to provide ACTA with the pre-completed renewal applications. Renewal applications submitted during any two (2) day late period shall not result in a point deduction for that two (2) day period.	Date renewal pre-completed applications delivered:	
3	Proposal	4	Each year Broker shall provide to ACTA a comprehensive renewal proposal at a meeting no less than ten (10) days before the policies annual renewal dates. Broker shall receive one point for each two (2) days prior to the ten (10) day proposal deadline as follows: one point for submittal twelve (12) days prior; two points for submittal fourteen (14) days prior; three points for submittal sixteen (16) days prior; and four points for submittal eighteen (18) days or more prior to the due date.	Date renewal proposal delivered: Property & Casualty: Executive Risk:	
4	Premium	4	Each year at renewal, Broker shall strive to reduce the total premium cost for comparable coverage by two percent (2%). One point shall be awarded for each half percentage reduction in total premium cost.	Renewal premium reduction percentage:	
5	Policy Delivery	4	Broker shall deliver all policies no later than ninety (90) days after the renewal date for each policy and shall receive one point for each ten (10) days of early delivery after the renewal date; delivery within 40 days of renewal shall award four points; delivery within 50 days of renewal shall award three points; delivery within 60 days of renewal shall award two points; delivery within 70 days of renewal shall award one point; and delivery 71+ days after the renewal date shall award zero points.	Renewal policy delivery date:	

\_\_\_\_\_  
Evaluator Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Evaluator Name

**EXHIBIT C**  
**MONTHLY SUBCONSULTANT MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of \_\_\_\_\_ for the referenced contract number.

Contract Name and No. \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Committed SBE Participation Percentage \_\_\_\_\_

				PROPOSED	ACTUALS		
	Name of Subcontractor	Work Performed	Certifications: * SBE/VSBE/MBE/WBE/OBE/DVBE	Original Proposed SBE Percentage	Amount Paid This Month	Amount Paid to Date	Overall Contract Amount Percentage (Paid to Date)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

\* Indicate all certifications held by each subcontractor

## EXHIBIT D

### 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.

# AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

\_\_\_\_\_  
Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to ACTA, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

**Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE     VSBE     MBE     WBE     DVBE     OBE

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date Signed \_\_\_\_\_

## NOTARY

STATE OF CALIFORNIA    )  
  ) ss  
COUNTY OF LOS ANGELES )

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

(1) \_\_\_\_\_  
Name of Signer (1)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and)

(2) \_\_\_\_\_  
Name of Signer (2)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Place Notary Seal and/or Stamp Above

Signature \_\_\_\_\_

## Contractor Description Form

For the Prime Contractor and each Subcontractor, state the type of SBE certification claimed and, if available, return documentation with this form to ACTA evidencing the declared SBE certification.

### PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_

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

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email address: \_\_\_\_\_