



A G E N D A

REGULAR MEETING

Governing Board of the Alameda Corridor Transportation Authority

Meeting Date and Time:	August 15, 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:	https://us02web.zoom.us/j/5622477111 Meeting ID: 562 247 7111 Passcode: boardmtg

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 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



OPEN SESSION

A. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

B. REPORTS AND PRESENTATIONS

- i. May 2024 Performance Report
- ii. ACTA Legislative Program
- iii. ACTA Budget Process and Actual Expenditures

C. APPROVAL OF THE MINUTES

- Minutes of the June 20, 2024, Regular Governing Board Meeting of the Alameda Corridor Transportation Authority

D. AGENDA ITEMS

Consent Agenda (1):

- 1. RECEIVE AND FILE Monthly Financial Reports as of May 31, 2024

Regular Agenda (2-9):

- 2. APPROVE Resolution No. JPA 24-1 approving the ACTA Officer Positions and Clarifying Assignment of Treasurer Duties
- 3. APPROVE and ADOPT the ACTA Officer and Employee Publicly Available Pay Schedule for Fiscal Year 2024/2025
- 4. APPROVE members of Ad Hoc Committee for Finance Planning
- 5. APPROVE Third Amendment to Agreement No. C0889 with Pacific Railway Enterprises, Inc. for railroad signal and communication design and support services extending the term by 3 years and increasing not-to-exceed compensation by \$4,000,000
- 6. APPROVE Agreement No. C0924 with DavCo Properties, LLC doing business as DavCo Realty Advisors for Real Estate Brokerage Services for ACTA's Office Lease
- 7. APPROVE Agreement No. C0925 with Willis Towers Watson for Insurance Brokerage Services for ACTA Operations
- 8. APPROVE Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan for the Pier B On-Dock Rail Support Facility Project
- 9. APPROVE Memorandum of Agreement for Port of Long Beach Pier B On-Dock Rail Support Facility Locomotive Facility Turnout and Crossover Connecting to the Alameda Corridor 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

ADJOURNMENT

REPORT ITEM 1

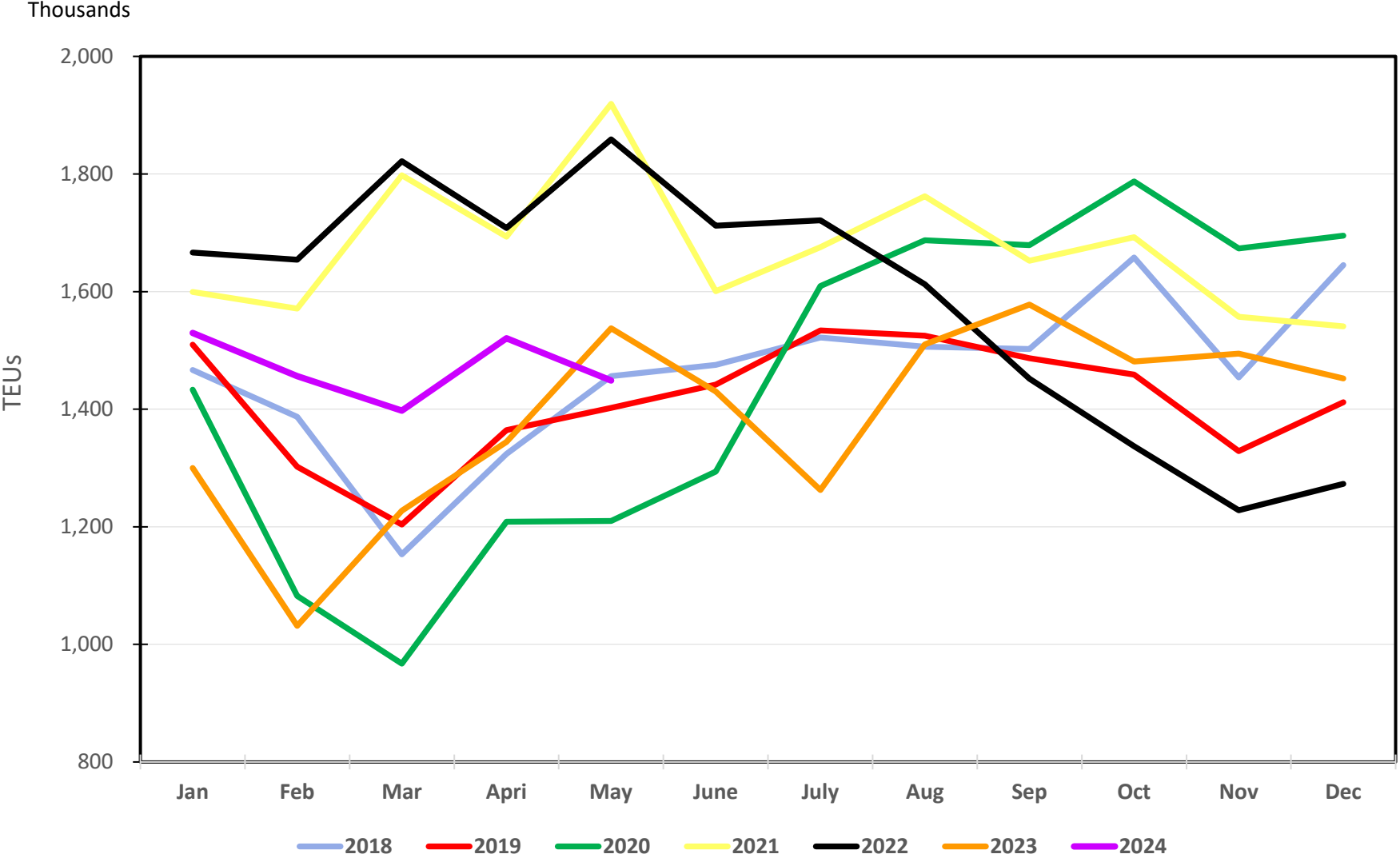
**Performance Report
May 2024**

Port Container Throughput (TEUs) – May 2024

	POLA		POLB		Combined	
	May-24	%Change	May-24	%Change	May-24	%Change
Imports	390,663	-4.5%	345,271	-4.5%	735,934	-4.5%
Exports	125,963	23.8%	100,885	-21.1%	226,848	-1.2%
Total Loaded	516,626	1.1%	446,156	-8.9%	962,782	-3.8%
Empty	236,267	-11.9%	249,782	-7.0%	486,049	-9.5%
Total	752,893	-3.4%	695,938	-8.2%	1,448,831	-5.8%
	YTD	% Change*	YTD	% Change*	YTD	% Change*
Imports	2,037,660	20.3%	1,667,646	13.2%	3,705,306	17.0%
Exports	663,035	40.1%	478,249	-20.4%	1,141,284	6.3%
Total Loaded	2,700,695	24.6%	2,145,895	3.5%	4,846,590	14.3%
Empty	1,203,039	5.8%	1,303,290	22.7%	2,506,329	14.0%
Total	3,903,734	18.1%	3,449,185	10.0%	7,352,919	14.2%

* Relative to same period in CY 2023

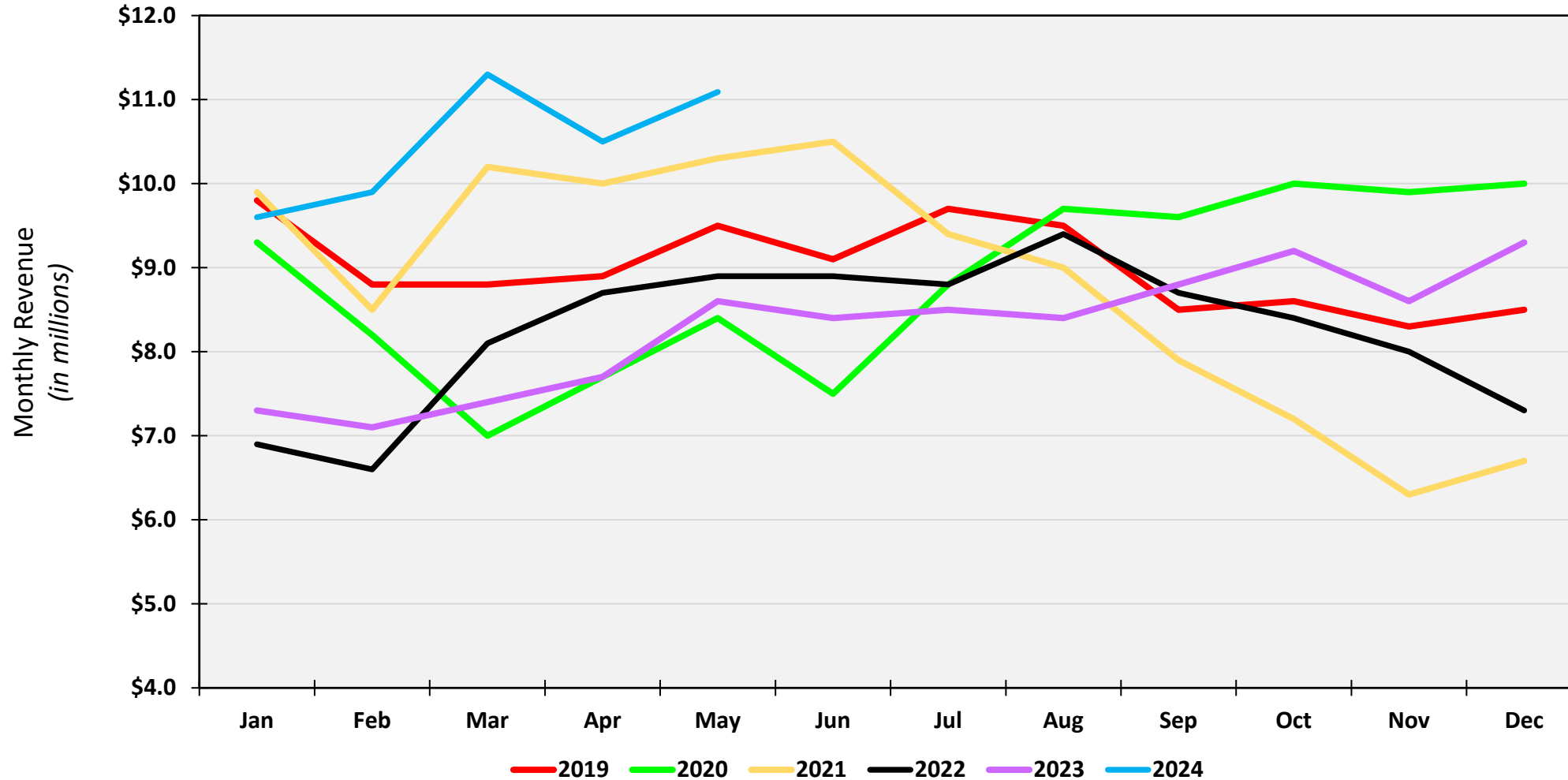
SP Bay Port TEUs Trends



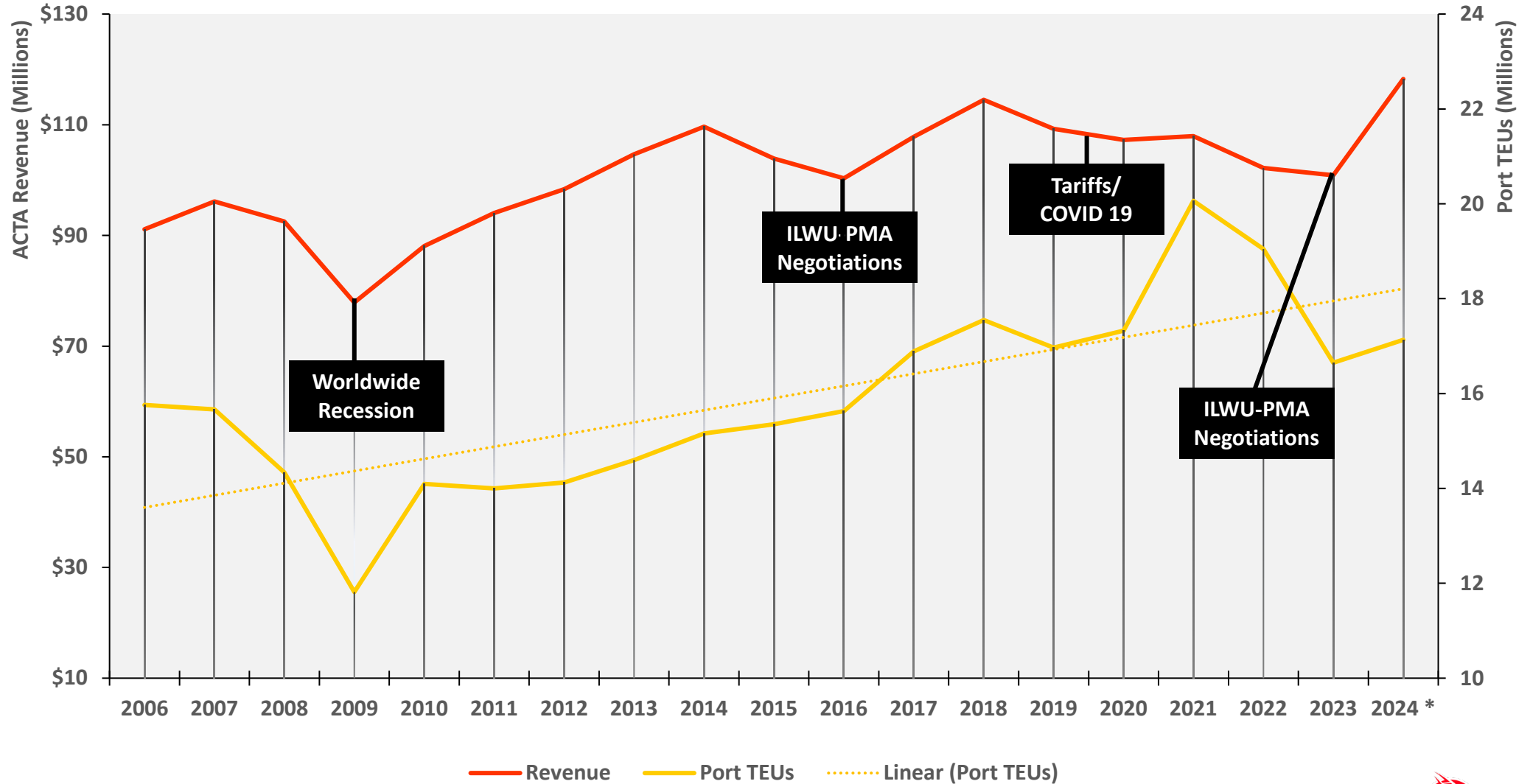
Alameda Corridor Performance May 2024

	May 2024	CY24	FY24
Revenue	\$11.1 M	\$52.3 M	\$105.1 M
Change from 2023	29.65 %	37.1 %	18.3 %
TEU's	475,353	2,229,508	4,581,649
Change from 2023	26.1 %	33.1 %	10.8 %

Corridor Revenue Performance CY2019 to CY2024



ACTA Revenue & Port TEUS



*Numbers updated thru April 2024, then averaged for year.

REPORT ITEM 2

**ACTA Legislative Program
August 15, 2024**




Policy Discussion

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

1. Finance – Met with financial advisors to evaluate alternatives
Met with new POLA financial staff
Next step – meet with Ad Hoc Committee & Port financial staff
Goal – Develop bond strategy that balances total cost, shortfalls
2. Revenue – Met separately with POLB & POLA executives to discuss alternatives to increase revenues
3. Shorthaul Rail – Reviewed recent feasibility studies and Ports’ evaluations
Initiated procurement of
Coordinating with Metro and SCAG on their efforts
Coordinating with UP and BNSF on their efforts/support
Next step – ACTA contract for study of market potential



Policy Discussion (cont)

4. State of Good Repair – First project is Signals/Communications 
 - ACTA submitted CRISI grant application for \$34M project
 - Next step – Implement Signal/Comm; evaluate PTC; 5-year plan; MOW RFP
5. Environmental – Seek improvements in locomotive emissions 
 - Next step – RRs focused implementation of near-term strategies in region
 - Develop long-term strategies in region
 - Advocate for reasonable legislation to incentivize improvement
6. Security – Continue enhancement of security for infrastructure/cargo 
 - ACTA sponsored area-specific task forces
 - Next step – Outreach with law enforcement and municipalities on cooper

REPORT ITEM 3

ACTA Budget Process

Operating Budget Preparation

- Annual Operating Budget is prepared by Accounting Dept
- Revenues are projected using ACTA Revenue Model
- Expenses are broken down into categories

- Salaries
- Benefits
- Office Expenses
- Other Administrative Expenses
- Information Technologies
- Bank & Investment

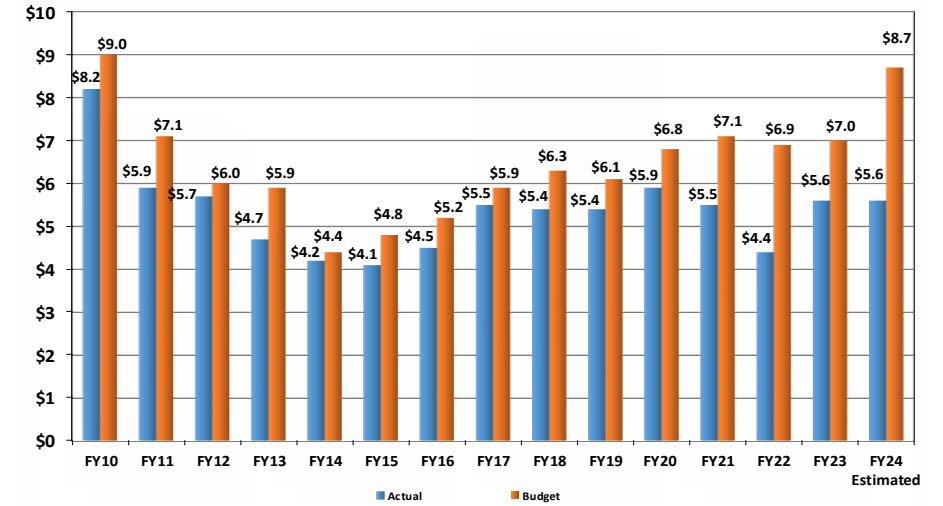
- ACET
- Audit
- Legal
- Public Affairs
- Professional Services
- Pass Through Expenses

Budget vs. Actual Admin Expenses (FY 2024)

- Salaries & Benefits – Actual \$600k lower than budget due to:
 - ✓ Elimination of AP Supervisor position
 - ✓ Delay in hiring COO and Executive Assistant
- ACET – Actual \$450k lower than budget due to:
 - ✓ Higher than expected pass-through activities and PTO
- Legal – Actual \$300k lower than budget due to contingency
- Professional Services – Actual \$1.6M lower than budget due to:
 - ✓ Delay in contracting process with ACET replacement firms
 - ✓ No overlap with ACET during transition

Budget vs. Actual Trend

- COVID Average Surplus = **\$1.5M**
 - ✓ Operating with vacant staff positions (\$0.6M)
 - ✓ Contingency in professional services (\$0.6M)
 - ✓ Contingency in legal services (\$0.3M)



- Contingencies advised due to flow of fund obligations
- 2024 Budget was high due to planned ACET transition/overlap
- 2025 Budget includes CalPERS Unfunded Accrued Liability
 - ✓ With full complement of staff, expect actuals to be within \$1M of budget

FY 2025 Budget

- Salaries & Benefits –\$1.8M increase due to:
 - ✓ \$1.7M CalPERS Unfunded Accrued Liability
 - ✓ \$120k for new staff & COLA/Merit on existing salaries
- Remainder of Administrative Expenses decreased
- Total Admin, EPA and SR-47 Expenses decreased by \$1.2M from \$12.9M in 2024 to \$11.7M in 2025

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 JUNE 20, 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

Edward Renwick, Port of Los Angeles

Suely Saro, City of Long Beach

Alternate members present:

Sam Joumblat, Port of Long Beach

Members absent:

Gene Seroka, Port of Los Angeles

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 10:03 a.m. by Chair Saro.

CLOSED SESSION

None

OPEN SESSION

A. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

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

B. REPORTS AND PRESENTATIONS

- **STATUS OF MOW RFP PROCESS**

Graham Christie presented the proposed Maintenance of Way (MOW) Services Request for Proposals (RFP) schedule.

- April 2024 CORRIDOR PERFORMANCE

Michael Leue presented the Corridor performance statistics through April 2024.

(Board Member Renwick arrived at 10:10 a.m.)

- ACTA Policy – Governing Board Engagement

Michael Leue provided an opportunity for discussion on the Board’s engagement in ACTA’s Legislative Program. There was a consensus that ACTA’s Legislative activities would be a standing discussion during the monthly Board meetings.

C. MINUTES

ACTA GOVERNING BOARD REGULAR MEETING OF MAY 16, 2024 – APPROVED.

Minutes of the Regular Meeting of May 16, 2024, of the Governing Board of the Alameda Corridor Transportation Authority, were presented to the Governing Board.

Board Member Colonna motioned, seconded by Chair Saro that the minutes of the May 16, 2024, Regular Meeting of the Alameda Corridor Transportation Authority be approved as submitted. Carried by the following vote:

AYES: Colonna, Joumblat, McOsker, Renwick, Saro

NOES: None

ABSTAIN: Cano

ABSENT: Seroka

D. AGENDA ITEMS

Consent Agenda

1. MONTHLY FINANCIAL REPORTS AS OF APRIL 30, 2024 – RECEIVED AND FILED.

Communication from Kevin L. Scott, Chief Financial Officer, dated June 20, 2024, recommending that the monthly financial reports as of April 30, 2024, be received and filed, was presented to the Governing Board.

No public comment was received on the Consent Agenda.

Regular Agenda

Item 7 was pulled from the Regular Agenda.

2. RESOLUTION NO. JPA 24-1 – ACTA OFFICER POSITIONS – ITEM CONTINUED.

Communication from Michael C. Leue, Chief Executive Officer, dated June 20, 2024, recommending the approval of Resolution No. JPA 24-1 approving ACTA Officer Positions, was presented to the Governing Board.

Following some discussion, the Board directed staff to bring the item back at its next meeting with additional information and options with fiscal impacts to evaluate whether the Ports can carry out the duties of the ACTA Treasurer.

No public comment was received on Item No. 2.

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

Communication from Kevin L. Scott, Chief Financial Officer, dated June 20, 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.

Chair Saro asked staff to present the item at the next Board meeting with pay schedules aligned with those of similar agencies in the region to ensure that there is equitable compensation for current staff.

No public comment was received on Item No. 3.

4. FY 2024/2025 BUDGET – APPROVED AND ADOPTED.

Communication from Kevin L. Scott, Chief Financial Officer, dated June 20, 2024, recommending the adoption of the final FY 2024/2025 (FY25) Operating Budget and appropriate cash spending of \$109,094,531, was presented to the Governing Board.

Board Member Renwick asked Staff to prepare a variance analysis that explains the difference between approved budgets and actual results as well as processes and procedures that might achieve more accurate budgeting.

Separately, Board Member Renwick asked that updated projections of Shortfall Advances be presented to the Governing Board or a subcommittee thereof.

Board Member Joublat asked that Staff provide the amount of ACTA’s unfunded actuarial liability.

No public comment was received on Item No. 4.

Board Member Joublat motioned, seconded by Board Member Colonna that Item No. 4 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, Joublat, McOsker, Renwick, Saro

NOES: None

ABSENT: Seroka

5. MODIFICATION TO ACTA DELEGATION OF AUTHORITIES TO CEO – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated June 20, 2024, recommending the approval of the delegation of certain authorities to the Chief Executive Officer (CEO) and authorization for the CEO to delegate said authorities to other ACTA officers, as necessary, was presented to the Governing Board.

No public comment was received on Item No. 5.

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

AYES: Cano, Colonna, Joublat, McOsker, Renwick, Saro

NOES: None

ABSENT: Seroka

6. BCA WATSON RICE – WESTERN REGION, LLP – AGREEMENT NO. C0922 – ON-CALL INFORMATION TECHNOLOGY SERVICES – APPROVED.

Communication from Graham Christie, Chief Operating Officer, dated June 20, 2024, recommending the approval of Agreement No. C0922 with BCA Watson Rice – Western Region, LLP (BCAWR) for on-call Information Technology (IT) Services with a compensation amount not to exceed \$2,000,000 and a four-year term and the authorization of 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. 6.

Vice Chair McOsker motioned, seconded by Board Member Colonna that Item No. 6 be approved as recommended. Carried by the following vote:

AYES: Cano, Colonna, Joublat, McOsker, Renwick, Saro

NOES: None

ABSENT: Seroka

(Item No. 7 was pulled from the regular agenda)

8. UNION PACIFIC RAILROAD – DOLORES YARD CROSSOVER PROJECT – REVISED SECOND AMENDMENT TO AGREEMENT NO. M0899 – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated June 20, 2024, recommending the authorization of the Chief Executive Officer or his designee to execute the revised Second Amendment to Agreement No. M0899 with the Union Pacific Railroad Co. (UPRR), so ACTA may continue to provide certain reimbursable services for UPRR’s Dolores Yard Crossover Project, was presented to the Governing Board.

No public comment was received on Item No. 8.

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

AYES: Cano, Colonna, Joublat, McOsker, Renwick, Saro

NOES: None

ABSENT: Seroka

9. ARCADIS, A CALIFORNIA PARTNERSHIP – ASSIGN AGREEMENT NO. C0719 & AGREEMENT NO. C0783 FROM IBI GROUP TO ARCADIS – AMENDMENT 16 TO AGREEMENT NO. C0719 & C0783 – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated June 20, 2024, recommending the approval and authorization of the Chief Executive Officer or Chief Financial Officer to execute two amendments to two agreements as follows: 1) Assign Agreement No. C0719 and Agreement No. C0783 from IBI Group, a California Partnership to Arcadis, A California Partnership due to name change; 2) Agreement No. C0719 – Amendment 16 provides a five-year term extension through December 31, 2029, and a budget increase of \$460,800; and 3) Agreement No. C0783 – Amendment 16 which provides a five-year extension through December 31, 2029, and an increase in contract value of \$500,000 for as-needed professional services and system enhancements, was presented to the Governing Board.

No public comment was received on Item No. 9.

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

AYES: Cano, Colonna, Joublat, McOsker, Renwick, Saro

NOES: None

ABSENT: Seroka

10. ELECTION OF ACTA CHAIR AND VICE CHAIR FOR FY25 – APPROVED.

Communication from Michael C. Leue, Chief Executive Officer, dated June 20, 2024, recommending the Governing Board to elect a Chair and Vice Chair of the ACTA Governing Board for FY25, was presented to the Governing Board.

No public comment was received on Item No. 10.

Chair Saro made a motion, seconded by Board Member Renwick, that Councilmember McOsker be elected as Chair for FY25.

Vice Chair McOsker made a motion, seconded by Board Member Renwick, that Councilmember Saro be elected as Vice Chair for FY25. Carried by the following vote:

AYES: Cano, Colonna, Joublat, McOsker, Renwick, Saro

NOES: None


ABSENT: Seroka

ADJOURNMENT

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

M E M O

Alameda Corridor Transportation Authority

To: Governing Board
Meeting Date: August 15, 2024
From: Kevin L. Scott, Chief Financial Officer 
Subject: RECEIVE AND FILE Monthly Financial Reports as of May 31, 2024

Recommendation:

Receive and file the Monthly Financial Reports as of May 2024.

Discussion:

The financial package includes the following:

- Monthly Financial Statements (See Transmittal 1).

Statements of Net Position - Unaudited statement of ACTA's assets and liabilities as of May 31, 2024. The audited June 30, 2023 financial information is also included for comparative purposes to the beginning of the fiscal year.

Statement of Revenues, Expenses and Changes in Net Position – Fiscal Year 2024 unaudited statement of revenues, expenses and changes in net position through May 31, 2024. Also included is the statement as of May 2023 which has been included for comparative purposes for eleven months of information.

Comparison of Budget Functional Expenses – Operating Budget by Expense Type - The fiscal year-to-date budget is compared to actual revenue and expenditures incurred as of May 31, 2024.

Comparison of Budget Functional Expenses – Operating Budget by Funds - The fiscal year-to-date budget is compared to actual revenue and expenditures incurred as of May 31, 2024.

Cash and Investment Summary – Cash and investment balances and the corresponding investment schedule are being presented as of May 31, 2024. The cash and investment balances are segregated by institution, account number reference, and account description. Balances are presented in book and market value. Also included are the grant funds received for the SR-47 project during the current fiscal year. The investment schedule summarizes the composition of the agency's investment portfolio and how the portfolio complies with the Board approved Investment Policy.

Cash Flow – Cash flow for the month of May 2024 is presented. It is presented in both a summary format and a detailed format. A fiscal year-to-date cash flow showing all activity through May 31, 2024 is also presented in both a summary format and a detailed format. The dollar amounts represent the book values for each account.



August 15, 2024
ITEM #01

Co-General Counsel Review:

ACTA's Co-General Counsel has reviewed this Board Report and there are no legal issues at this time.

Transmittals:

Transmittal 1 - Monthly Financial Statements as of May 31, 2024



Statements of Net Position

May 31, 2024 and June 30, 2023

	<u>May 2024</u>	<u>June 2023</u>
<u>Assets & Deferred Outflows of Resources</u>		
Current Assets:		
Restricted Cash & Cash Equivalents, & Investments	\$ 47,204,899	\$ 107,715,005
Receivables	14,701,525	17,496,962
Prepaid Expenses	2,704,908	2,294,731
Total Current Assets	64,611,332	127,506,698
Prepaid Bond Insurance Premiums, net	29,791,095	18,539,640
Restricted Investments *	132,229,599	72,450,394
Assets Held for Transfer	3,116,329	3,116,329
Net OPEB Asset	271,917	271,917
Capital Assets Not Being Depreciated	438,148,732	438,148,732
Capital Assets, Net	1,015,045,278	1,034,397,519
Total Assets	1,683,214,282	1,694,431,229
Deferred Outflows of Resources:		
Loss on Refunding	(5,362,498)	45,012,155
Pension and OPEB Related Items	1,611,550	1,611,550
Total Assets & Deferred Outflows of Resources	\$ 1,679,463,334	\$ 1,741,054,934
<u>Liabilities, Deferred Inflows of Resources, & Net Position</u>		
Current Liabilities:		
Accounts Payable	\$ 1,712,503	\$ 6,784,529
Unearned Revenue	7,136,250	4,425,838
Accrued Interest Payable, Current Portion	8,279,941	12,550,134
Revenue Bonds Payable, Current Portion	16,255,000	15,495,000
Other Liabilities	558,372	628,447
Total Current Liabilities	33,942,066	39,883,948
Noncurrent Liabilities:		
Shortfall Advances Payable to Ports	13,778,913	13,115,138
Net Pension Liability	2,304,499	2,304,499
Accrued Interest Payable, Net of Current Portion	530,247,940	621,655,133
Revenue Bonds Payable, Net of Current Portion & Unamortized Discount	1,780,599,800	1,649,289,843
Total Noncurrent Liabilities	2,326,931,152	2,286,364,613
Total Liabilities	\$ 2,360,873,218	\$ 2,326,248,561
Deferred Inflows of Resources	346,107	346,107
<u>Net Position</u>		
Net Investment in Capital Assets	-	-
Restricted for Debt Service	121,021,594	119,498,555
Restricted for Capital Projects	-	-
Restricted by Master Trust Agreement	86,293,621	79,612,842
Unrestricted	(889,071,206)	(784,651,131)
Total Net Position	(681,755,991)	(585,539,734)
Total Liabilities, Deferred Inflows of Resources, & Net Position	\$ 1,679,463,334	\$ 1,741,054,934

* All investments with a maturity within three months are considered cash for the year-end financial statements. Monthly, unaudited financial statements, carry all investments, regardless of maturity date(s), as Restricted Investments. Fully detailed classifications are only done at year-end in accordance with GASB 41, therefore classification differences exist.

	<u>May 2024</u>	<u>June 2023</u>	<u>FY2024 Decrease</u>
Current	\$ 47,204,899	\$ 107,715,005	
Noncurrent	132,229,599	72,450,394	
	\$ 179,434,498	\$ 180,165,399	\$ (730,901)



**Statement of Revenues, Expenses, &
Changes in Net Position**
For Eleven Months ended May 31, 2024 and 2023

	<u>May 2024</u>	<u>May 2023</u>
Operating Revenues:		
Use Fees & Container Charges	\$ 106,321,787	\$ 91,156,494
Maintenance-of-Way Charges	8,977,826	6,781,948
Total Operating Revenues	<u>115,299,613</u>	<u>97,938,442</u>
Operating Expenses:		
Salaries & Benefits	2,475,893	2,318,184
Administrative Expenses	1,571,378	1,387,227
Professional Services	827,464	748,619
Maintenance-of-Way	13,585,476	10,787,875
Depreciation	19,352,241	19,352,241
Total Operating Expenses	<u>37,812,452</u>	<u>34,594,146</u>
Operating Income (Loss)	77,487,161	63,344,296
Nonoperating Revenues:		
Interest & Investment Revenue, Net	7,523,603	3,727,444
Public Benefit Income	334,351	118,356
Miscellaneous Revenue	883,013	647,120
Total Nonoperating Revenues	<u>8,740,967</u>	<u>4,492,920</u>
Nonoperating Expenses:		
Interest Expense	177,884,659	110,445,517
Expenses for Public Benefit & Pass Thru Expenses	995,097	518,057
Costs of Issuance	3,564,629	29,593,940
Gain/Loss Sale or Transfer of Capital Assets	-	-
Total Nonoperating Expenses, Net	<u>182,444,385</u>	<u>140,557,514</u>
Changes in Net Position	(96,216,257)	(72,720,298)
Net Position:		
Net Position, Beginning of Year	(585,539,734)	(524,018,291)
Net Position - End of Year	<u>\$ (681,755,991)</u>	<u>\$ (596,738,589)</u>



Comparison of Budget By Expenses Type as of May 31, 2024

(\$ in thousands)	Fiscal Year-to-Date		
	Budget*	Actuals	Variance
Revenues			
Operating Revenues			
Use Fees & Container Charges	\$ 79,903,887	\$ 106,321,787	\$ 26,417,900
Maintenance-of-Way Charges	13,438,935	8,977,826	(4,461,109)
Total Operating Revenues	<u>93,342,822</u>	<u>115,299,613</u>	<u>21,956,791</u>
Other Revenues			
Projects			
Pier Pass	55,000	55,000	-
EPA Order & Pass Thru Income	1,072,349	682,918	(389,431)
Subtotal Projects	<u>1,127,349</u>	<u>737,918</u>	<u>(389,431)</u>
Miscellaneous			
Public Benefit Income	2,743,446	334,351	(2,409,095)
Gain/Loss from Sale of Fixed Assets	-	-	-
Ports-Shortfall Advances	-	-	-
Office Rental Income	60,583	145,094	84,511
Investment Income	1,384,182	7,523,603	6,139,421
Subtotal Miscellaneous	<u>4,188,211</u>	<u>8,003,048</u>	<u>3,814,837</u>
Subtotal Other Revenues	5,315,560	8,740,966	3,425,406
Total Sources of Funds	<u>98,658,382</u>	<u>124,040,579</u>	<u>25,382,197</u>
Expenses			
Salaries	2,078,091 **	1,694,864	(383,227)
Benefits	954,029	781,029	(173,000)
Office Expenses	463,130	460,567	(2,563)
Other Management Expenses	95,242	41,771	(53,471)
Information Technologies	168,208	97,183	(71,025)
Bank & Investment	160,417	144,343	(16,074)
ACET Administrative & Capital Support	1,417,114	827,514	(589,600)
Audit	188,951	176,596	(12,355)
Legal	623,333	380,075	(243,258)
Governmental Affairs	77,917	71,596	(6,321)
Other Professional Services	1,761,487	199,197	(1,562,290)
Pass Thru Expenses & EPA Order	1,072,349	646,249	(426,100)
Expenses for Public Benefit	2,743,446	348,848	(2,394,598)
Total Administrative Expenses	<u>11,803,714</u>	<u>5,869,832</u>	<u>(5,933,882)</u>
Maintenance-of-Way Expenses-Rail - Contractors	10,582,624	5,028,528	(5,554,096)
Maintenance-of-Way Expenses-Rail - Capital	-	-	-
Maintenance-of-Way Expenses-Rail - Other	2,856,310	3,949,298	1,092,988
Maintenance-of-Way Expenses-Nonrail - Contractors	1,319,300	988,705	(330,595)
Maintenance-of-Way Expenses-Nonrail - Capital	5,693,912	3,215,082	(2,478,830)
Maintenance-of-Way Expenses-Nonrail - Other	242,758	261,330	18,572
Maintenance-of-Way Expenses - ACTA	174,991	142,533	(32,458)
Total Maintenance-of-Way Expenses	<u>20,869,895</u>	<u>13,585,476</u>	<u>(7,284,419)</u>
Subtotal Administrative and M&O Expenses	<u>32,673,609</u>	<u>19,455,308</u>	<u>(13,218,301)</u>
Financing Expenses			
Debt & Port Advance Interest/Bonds Premium Discount	48,685,466	49,434,680	749,214
Debt Service - Accrued CAB Interest	66,423,406	128,449,978	62,026,572
Subtotal Financing Expenses	<u>115,108,872</u>	<u>177,884,658</u>	<u>62,775,786</u>
Depreciation & Amortization Expenses			
Depreciation	19,236,400	19,352,241	115,841
Cost of Issuance	-	3,564,629	3,564,629
Subtotal Depreciation & Amortization Expenses	<u>19,236,400</u>	<u>22,916,870</u>	<u>3,680,470</u>
Total Operating Expenses	167,018,881	220,256,837	53,237,955
Income (Loss)	<u>\$ (68,360,498)</u>	<u>\$ (96,216,257)</u>	<u>\$ (27,855,756)</u>

* Y-T-D Budget calculated on a straight line basis.

** Amended budget



Comparison of Budget By Funds as of May 31, 2024

(\$ in thousands)	Fiscal Year-to-Date		
	Budget*	Actuals	Variance
Revenues			
Operating Revenues			
Use Fees & Container Charges	\$ 79,903,887	\$ 106,321,787	\$ 26,417,900
Maintenance-of-Way Charges	13,438,935	8,977,826	(4,461,109)
Total Operating Revenues	<u>93,342,822</u>	<u>115,299,613</u>	<u>21,956,791</u>
Other Revenues			
Projects			
Pier Pass	55,000	55,000	-
EPA Order & Pass Thru Income	1,072,349	682,918	(389,431)
Subtotal Projects	<u>1,127,349</u>	<u>737,918</u>	<u>(389,431)</u>
Miscellaneous			
Public Benefit Income	2,743,446	334,351	(2,409,095)
Gain/Loss from Sale of Fixed Assets	-	-	-
Ports-Shortfall Advances	-	-	-
Office Rental Income	60,583	145,094	84,511
Investment Income	1,384,182	7,523,603	6,139,421
Subtotal Miscellaneous	<u>4,188,211</u>	<u>8,003,048</u>	<u>3,814,837</u>
Subtotal Other Revenues	5,315,560	8,740,967	3,425,407
Total Sources of Funds	<u>98,658,382</u>	<u>124,040,580</u>	<u>25,382,198</u>
Expenses			
Financing Fees	1,256,009 **	532,864	(723,145)
Administrative Costs	6,731,908 **	4,341,872	(2,390,036)
Capital	-	-	-
Railroads-M&O	13,438,935	8,977,826	(4,461,109)
Reserve-M&O	7,255,969	4,465,117	(2,790,852)
Financing Fees-M&O	174,991	142,533	(32,458)
Revenue Fund-Interest & Bonds Premium/Discount	48,685,467	49,434,680	749,213
Expenses for Public Benefit	2,743,446	348,848	(2,394,598)
LAIF General Fund-Pass Thru & EPA	1,072,349	646,249	(426,100)
Total Expenses	<u>81,359,074</u>	<u>68,889,989</u>	<u>(12,469,085)</u>
Non Cash Expenses			
Accrued CAB Debt Service Interest	66,423,406	128,449,978	62,026,572
Depreciation	19,236,400	19,352,241	115,841
Cost of Issuance	-	3,564,629	3,564,629
Subtotal Interest, Depreciation, & Amortization Expenses	<u>85,659,806</u>	<u>151,366,848</u>	<u>65,707,042</u>
Total Operating Expenses	167,018,880	220,256,837	53,237,957
Income (Loss)	<u>\$ (68,360,498)</u>	<u>\$ (96,216,257)</u>	<u>\$ (27,855,759)</u>

* Y-T-D Budget calculated on a straight line basis.

** Amended budget



Cash & Investment Summary as of May 31, 2024

Cash and Investment Balances (\$ in thousands)

Institution	Account Reference #	Account Description	Book Value	Market Value
Bank of America				
	0457 & 0796	Concentration & Disbursement Accounts	528	528
Pre Bond Sale Accounts-Union Bank- Now US Bank				
	5080	SR-47	4,630	4,695
		Grant Reimbursement Received this month \$25,262.07		
		Grant Reimbursement Received FY to Date \$2,845,407.83		
Local Agency Investment Fund (LAIF)				
	40-19-006	General Fund	10,249	10,249
1999, 2004, 2012, 2016, 2022 Bond Funds- US Bank				
Revenue Funds	1170	Revenue Fund	48,040	48,391
	1171	M & O Fund	5,709	5,762
	1172	Reserve Account	8,278	8,363
	1189	Administrative Costs	9,129	9,282
		Subtotal Revenue Funds	71,156	71,798
Debt Service Funds	61180	99A Interest	1	1
	61181	99A Principal	-	-
	61183	99A Redemption	-	-
	61192	99A Senior Lien	299	302
	61193	99A 17th Level	117	117
	61186	99A Construction	-	-
	61200	99C Interest Account	2,127	2,127
	61201	99C Principal Account	25,879	25,924
	38003	04B Debt Service Reserve	25,483	24,722
	39004	04A Debt Service Reserve	15,258	15,258
	39006	04A Financing fee	2,058	2,091
	39002	04A Debt Service Principal Account	-	-
	59001	12 Debt Service Interest Account	304	304
	59002	12 Debt Service Principal Account	6,988	6,988
	59004	12 Debt Service Reserve Account	7,889	7,569
	27000	16A Debt Service	14	14
	27004	16A Debt Service Reserve	3,730	3,596
	27001	16A Interest	-	-
	108006	16B Financing fee	741	752
	108000	16B Financing fee	26	26
	108001	16B Interest	8	8
	98000	2022A DS Fund	33	33
	98006	2022A Bond Proceeds Account	-	-
	53000	2022B DS Fund	66	66
	53002	2022B Interest Account	2,046	2,046
	86000	2022C DS Fund	40	40
	86002	2022C Interest Account	3	3
	86006	2022C Bond Proceeds Account	-	-
	40000	2024A DS Fund	21	21
	40002	2024A Interest Account	57	57
	740000	2024B DS Fund	-	-
	280000	2024C DS Fund	13	13
	90000	2024D DS Fund	86	86
		Subtotal Debt Service Funds	93,287	92,164
Total 1999, 2004, 2012, 2016, 2022, 2024 Bond Funds- U.S. Bank			164,443	163,962
Total Cash & Investment Balances			\$ 179,850	\$ 179,434



Cash & Investment Summary (Cont'd) as of May 31, 2024

Investment Schedule MTI and non-MTI (\$ in thousands)

Type of Investment	Book Value	Market Value	Percentage of Total	Investment Policy Limit
Money Market Funds	36,428	36,428	20.30%	20.00%
U.S. Government & Agency Obligations	37,298	37,015	20.63%	100.00%
Commercial Paper	-	-	0.00%	15.00%
U.S. Treasury Note	86,755	86,608	48.27%	100.00%
Corporate Bonds	8,592	8,606	4.80%	30.00%
Bank of America	528	528	0.29%	20.00%
Local Agency Investment Fund	10,249	10,249	5.71%	\$40 Million
Total	\$ 179,850	\$ 179,434	100.00%	

Investment Schedule (MTI) (\$ in thousands)

Type of Investment	Book Value	Market Value	Percentage of Total	Investment Policy Limit
Money Market Funds	35,907	35,907	20.01%	20.00%
U.S. Government & Agency Obligations	35,626	35,323	19.69%	100.00%
Commercial Paper	-	-	0.00%	15.00%
U.S. Treasury Note	78,610	78,364	43.67%	100.00%
Corporate Bonds	8,592	8,606	4.80%	30.00%
Bank of America	-	-	0.00%	20.00%
Local Agency Investment Fund	-	-	0.00%	\$40 Million
Total	\$ 158,735	\$ 158,200	88.17%	

Investment Schedule (non-MTI) (\$ in thousands)

Type of Investment	Book Value	Market Value	Percentage of Total	Investment Policy Limit
Money Market Funds	521	521	0.29%	20.00%
U.S. Government & Agency Obligations	1,672	1,692	0.94%	100.00%
Commercial Paper	-	-	0.00%	15.00%
U.S. Treasury Note	8,145	8,244	4.59%	100.00%
Corporate Bonds	-	-	0.00%	30.00%
Bank of America	528	528	0.29%	20.00%
Local Agency Investment Fund	10,249	10,249	5.71%	\$40 Million
Total	\$ 21,115	\$ 21,234	11.83%	



Cash Flow as of May 31, 2024

Monthly Cash Flow

May 2024

Total Beginning Cash		<u>\$ 71,202,138</u>
Receipts		
Use Fees & Container Charges	\$ 12,167,053	
M&O & Misc. Revenues, & Funds Transfers	132,214	
Total Receipts	<u>12,299,267</u>	
Disbursements		
Debt Service - Transfer to Accounts	3,073,249	
M&O, Administrative, & Financing Expenses	6,173,898	
Total Disbursements	<u>9,247,147</u>	
Cash Flow for Month		<u>\$ 3,052,120</u>
Total Ending Cash		<u>\$ 74,254,258</u>



Cash Flow as of May 31, 2024

May 2024

Beginning Cash

Master Indenture Revenue Fund 1170	38,964,588
Master Indenture M&O Fund 1171	8,201,867
Master Indenture Reserve Fund 1172	11,386,452
Admin Fund 1189	9,462,728
Financing Fee-Senior	313,597
Financing Fee-1st Sub	2,125,052
Financing Fee-2nd Sub	747,854
Total Beginning Cash	<u>71,202,138</u>

Receipts

Use Fee & Container Charges	12,167,053
M&O	-
Funds Transferred from BOA to Admin Fund	-
Funds Transferred from BOA to Reserve Fund	-
Interest Income / Loss	132,214
Total Receipts	<u>12,299,267</u>

Total Cash \$ 83,501,405

Disbursements

Debt Service - transfer to 1999C Principal	-
Debt Service - transfer to 1999C Interest	1,050,830
Debt Service - transfer to 2012 Interest	149,978
Debt Service- transfer to 2012 Principal	832,917
Debt Service- transfer to 2022B Interest	1,011,233
Debt Service - transfer to 2024A Interest	28,292
Semi-Annual Accounting - Transfers & Debt Service	
Transfer to 2012 Reserve	-
Transfer to 2004A Financing Fee	-
Transfer to 2016B Financing fee	-
Transfer to 1999A Financing fee	-
Transfer to Admin Fund	-
Transfer to Master Reserve	-
Transfer to 2016A Reserve	-
Transfer to 2016B Financing Fee	-
Transfer to 2022C Reserve Fund	-
Transfer to 17th level	-
Debt service payment - 2016A Interest	-
Debt service payment - 2016B Interest	-
Debt service payment - 2022C Interest	-
M&O - Railroads expense payments	2,567,978
M&O - Reserve expense payments	3,144,008
Administrative expense payments	362,937
Financing expense payments	98,974

Total Disbursements 9,247,147

Net Ending Cash \$ 74,254,258

Ending Cash

Master Indenture Revenue Fund 1170	48,039,026
Master Indenture M&O Fund 1171	5,708,928
Master Indenture Reserve Fund 1172	8,278,434
Admin Fund 1189	9,128,952
Financing Fee-Senior	299,108
Financing Fee-1st Sub	2,058,445
Financing Fee-2nd Sub	741,365

Total Ending Cash \$ 74,254,258



Cash Flow-YTD as of May 31, 2024

Cash Flow - Fiscal Year-to-Date

May 2024

Total Beginning Cash as of 7/1/23		\$	66,180,891
Receipts			
Use Fees & Container Charges	\$	104,113,203	
M&O & Misc. Revenues, & Funds Transfers		<u>32,350,259</u>	
Total Receipts		136,463,462	
Disbursements			
Debt Service - Transfer to Accounts		94,219,818	
M&O, Administrative, & Financing Expenses		<u>34,170,276</u>	
Total Disbursements		128,390,094	
Cash Flow for Fiscal Year		\$	<u>8,073,368</u>
Total Ending Cash		\$	<u><u>74,254,258</u></u>



Cash Flow -YTD as of May 31, 2024

May 2024

Beginning Cash as of 7/1/23

Master Indenture Revenue Fund 1170	46,932,116
Master Indenture M&O Fund 1171	928,185
Master Indenture Reserve Fund 1172	11,323,311
Admin Fund 1189	6,997,278
Financing Fee-Senior	-
Financing Fee-1st Sub	-
Financing Fee-2nd Sub	-
Total Beginning Cash	<u>66,180,891</u>

Receipts

Use Fee & Container Charges	104,113,203
M&O	15,269,656
Funds Transferred from BOA to Admin Fund	216,932
Funds Transferred from BOA to Reserve Fund	-
Annual Accounting - Transfer from Revenue Fund	14,324,673
Interest Income / Loss	2,538,998
Total Receipts	<u>136,463,462</u>

Total Cash \$ 202,644,353

Disbursements

Debt Service - transfer to 1999C Principal	11,559,130
Debt Service - transfer to 1999C Interest	9,203,781
Debt Service - transfer to 2012 Interest	1,684,952
Debt Service- transfer to 2012 Principal	9,300,833
Debt Service - transfer to 2022B Interest	11,089,975
Debt Service- transfer to 2024A Interest	108,427
Semi-Annual Accounting - Transfers & Debt Service	
Transfer to 2012 Reserve	-
Transfer to 2004A Financing Fee	1,067,345
Transfer to 2016B Financing fee	227,635
Transfer to 1999A Financing fee	387,851
Transfer to Admin Fund	435,431
Transfer to Master Reserve	31,441
Transfer to 2016A Reserve	-
Transfer to 2016B Financing Fee	-
Transfer to 2022C Reserv Fee	-
Transfer to 17th level	21,283,462
Debt service payment - 2016A Interest	5,684,900
Debt service payment - 2016B Interest	16,849,406
Debt service payment - 2022C Interest	5,305,250
M&O - Railroads expense payments	10,733,065
M&O - Reserve expense payments	12,561,757
Administrative expense payments	10,305,771
Financing expense payments	569,682
Total Disbursements	<u>128,390,095</u>


Net Ending Cash \$ 74,254,258

Ending Cash

Master Indenture Revenue Fund 1170	48,039,026
Master Indenture M&O Fund 1171	5,708,928
Master Indenture Reserve Fund 1172	8,278,434
Admin Fund 1189	9,128,952
Financing Fee-Senior	299,108
Financing Fee-1st Sub	2,058,445
Financing Fee-2nd Sub	741,365
Total Ending Cash	<u>\$ 74,254,258</u>

M E M O

Alameda Corridor Transportation Authority

To: Governing Board
Meeting Date: August 15, 2024
From: Michael C. Leue, Chief Executive Officer 
Subject: APPROVE Resolution No. JPA 24-1 approving the ACTA Officer Positions and Clarifying Assignment of Treasurer Duties

Recommendation:

Staff recommends the approval of the proposed resolution to clarify and affirm the current ACTA Officers authorized by ACTA's Amended and Restated Joint Exercise of Powers Agreement dated as of December 18, 1996 (as amended, the "Joint Powers Agreement"). The proposed resolution clarifies the appointment of ACTA's Treasurer.

Background:

The Treasurer, who shall be selected in accordance with Government Code Sections 6505.5 and 6505.6;¹ so designated shall do all of the following:

- (a) Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit of the agency or entity.
- (b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all agency or entity money so held by him or her.
- (c) Pay, when due, out of money of the agency or entity held by him or her, all sums payable on outstanding bonds and coupons of the agency or entity.
- (d) Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement.
- (e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he or she holds for the agency or entity, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

Option 1: The Governing Board has the option, in compliance with Government Code Section 6505.5, to designate the treasurer of one of the contracting parties (City of Long Beach or City of Los Angeles), or in lieu thereof, the county treasurer, or a certified public accountant to be the depository and have custody of all the money of the agency or entity, from whatever source to perform the Treasurer duties. With this option, the Government Code does not require an internal audit.

¹ Government Code Section 6505.6 allows such position to be filled by an officer or employee of the Authority. The relevant Government Code sections are provided in Transmittal 2.

Option 2: Pursuant to the authority granted under California Government Code Sections 6505.5 and 6505.6, Joint Powers Authority (“JPA”) Treasurer duties may be performed by a JPA member treasurer or an employee or officer of a JPA entity, respectively. Starting in 2014, ACTA approved a resolution assigning the Treasurer position to a qualified financial port representative to oversee the duties while delegating the performance of those Treasurer duties to ACTA’s CFO. Government Code Section 6505.6 authorizes an ACTA officer to hold the Treasurer position and perform the duties, but it does not recognize the appointment of a secondary position for oversight. Since oversight by the Ports is already implicit in item (e) of the Treasurer duties, it is recommended that Resolution No. JPA 24-1 be approved to clarify the assignment of the Treasurer duties to the ACTA CFO. ACTA will continue to engage the services of an outside auditor in compliance with Government Code Section 6505.6.

ACTA Officer Positions:

Section 4E (Officers) of the Joint Powers Agreement requires that the Governing Board appoint qualified personnel to fill the following positions:

1. General Manager, who shall be responsible for the administration of the Authority;
2. Authority Engineer, who shall be a registered professional engineer in California responsible for engineering and construction of the Alameda Corridor;
3. Treasurer, who shall be selected in accordance with Government Code Sections 6505.5 and 6505.6;
4. Auditor/Controller, who shall be selected in accordance with Government Code Sections 6505.5 and 6505.6;
5. General Counsel, appointed from the City Attorney’s Office of the City of Long Beach and/or the City of Los Angeles who shall provide legal advice to the Authority;
6. Secretary, who shall keep the official records and correspondence of the Authority; and
7. Such other officers as determined by the Governing Board.

Since ACTA’s inception, officer positions have been filled by either Port or ACTA employees. Over the years, with Governing Board approval, the officer positions have been renewed or additional positions have been added, re-named and/or consolidated as follows:

General Manager

The original role of the General Manager (GM) was augmented in 1998 with the Board appointment of a Chief Executive Officer (CEO). The GM position was re-named the General Manager and Chief Operating Officer (GM/COO). Later the GM/COO position was abolished, and the duties absorbed by the CEO.

By the proposed resolution, it is affirmed that the position of the CEO includes the duties originally assigned to the General Manager, and that the CEO title replaces the GM title.

Authority Engineer

The role of Authority Engineer was initially performed by engineering representatives of both POLA and POLB. In 1998, the position was renamed the Director of Construction and Engineering (DCE) and filled with an ACTA contract employee. In early 2003, an ACTA employee was nominated to the position. In mid-2003, the position was absorbed into the CEO position, when the DCE was promoted to the CEO position. The current CEO has the requisite California PE license.

By the proposed resolution, it is affirmed that the CEO also fills the role of the Authority Engineer.

Treasurer

The Treasurer position will be held by ACTA’s Chief Financial Officer (CFO) in compliance with Government Code Section 6505.6. In compliance with Government Code Section 6505, the CFO shall authorize a certified public accountant to perform annual independent audits of ACTA’s accounts and records.

By the proposed resolution, it is affirmed that the CFO also fills the role of Treasurer.

Auditor/Controller

The function of Auditor/Controller was originally performed by Port-provided personnel on a part-time basis, with the Auditor provided by one Port and the Controller provided by the other. The role of Controller was absorbed into the ACTA CFO position April 10, 2014 (JPA 2014-3).

For some time, ACTA maintained a separate Internal Auditor position during the peak of construction activity, but this role has subsequently been performed by independent external auditors under the purview of the CFO and overseen by the Audit Committee of the ACTA Governing Board.

Pursuant to the authority granted by Government Code Section 6505.6 and as set forth in the proposed resolution, it is affirmed that the CFO shall perform the duties of the Auditor/Controller.

General Counsel

The role of General Counsel, which must be filled by either the City Attorney’s Office of the City of Los Angeles or the City of Long Beach, was originally filled by the City of Los Angeles. By Board resolution in 2005, the role is now performed by Co-General Counsel from each of the City Attorney’s Offices. Their services are reimbursed by ACTA.

By the proposed resolution, it is affirmed that General Counsel title has been replaced by the Co-General Counsel title.

Secretary

The role of Secretary has been provided by both ACTA and port staff over the years. Currently, the position is being performed by an ACTA staff member, as approved by the Governing Board in March 2013.

By the proposed resolution, it is affirmed that Secretary functions and title remain the same.

Chief Operating Officer

The role of Chief Operating Officer (COO), as defined in the ACTA reorganization previously presented to the Board, has been added to the ACTA officers. The ACTA Joint Powers Agreement authorizes the Board to add additional officers as it determines necessary. The COO reports to the CEO and provides leadership in contract management with technical guidance to the performance of contracted services including engineering and railroad maintenance of way.

By the proposed resolution, it is affirmed that the position of Chief Operating Officer is an ACTA officer.

Budget Impact:

The approved ACTA Operating Budget will not be impacted by the adoption of this resolution.



August 15, 2024
ITEM #02

Co-General Counsel Review:

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

Transmittals:

Transmittal 1 – Resolution JPA 24-1

Transmittal 2 – Government Code Sections 6505.5 and 6506.6

RESOLUTION NO. JPA-24-1

RESOLUTION APPROVING THE OFFICER POSITIONS AND FUNCTIONS OF THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY

WHEREAS, in December 1996, the City of Los Angeles and the City of Long Beach acting by and through their respective Harbor Commissions entered into the Amended and Restated Joint Exercise of Powers Agreement between the City of Long Beach and the City of Los Angeles to be known as the Alameda Corridor Transportation Authority (ACTA); and

WHEREAS, Section 4.E of the Amended and Restated Joint Exercise of Powers Agreement (Agreement) names the Officer positions and functions, and provides that such Officers shall be appointed by the Governing Board of ACTA; and

WHEREAS, Section 4E of the Agreement lists the titles of the Officers as the General Manager, Authority Engineer, Treasurer, Auditor/Controller, General Counsel, Secretary, and other officers as determined by the Governing Board; and

WHEREAS, over the course of the years since 1996, including Resolution JPA 14-3, positions have been added or re-titled and functions changed or consolidated; and

WHEREAS, Governing Board of ACTA desires to affirm the current list of Officers by position and function, in compliance with the Agreement;

NOW THEREFORE BE IT RESOLVED that the Governing Board of ACTA does hereby affirm the following:

1. The Chief Executive Officer (CEO) replaces the General Manager title set forth in the Agreement, and the CEO shall be responsible for the administration of ACTA. The position of Authority Engineer shall be held by the CEO so long as the then-current CEO is a registered engineer in California and shall be responsible for the engineering and construction of the Alameda Corridor. **The CEO is an ACTA Officer.**
2. The Chief Operating Officer (COO), created in 2024 by approval of the Governing Board pursuant to authority granted in the Agreement, shall be responsible for the management and technical direction of certain ACTA staff and outside contracting services. **The COO is an ACTA Officer.**
3. The Chief Financial Officer (CFO) shall be responsible for management of certain ACTA staff and financial matters. The position of Treasurer position shall be held by the ACTA CFO who shall perform the functions required under Government Code Sections 6505 *et seq.* The Auditor/Controller position shall be held by the ACTA CFO who shall perform duties as set forth in Government Code Section 6505 *et seq.*, with said duties overseen by the ACTA Audit Committee. **The CFO is an ACTA Officer.**

4. The General Counsel position shall be filled by an attorney from each of the Los Angeles and Long Beach City Attorney's Offices to provide legal advice to ACTA. **The Co-General Counsel are ACTA Officers.**
5. The Secretary position shall be filled by an ACTA staff person appointed by the Governing Board, who shall keep the official records and correspondence of ACTA. **The Secretary is an ACTA Officer.**
6. The Governing Board will evaluate the performance and approve salary adjustments of the CEO. The CEO will be responsible for the performance evaluations and salary adjustments of all other ACTA employees including officers.

I HEREBY CERTIFY THAT the foregoing resolution was adopted by the ACTA Governing Board at its meeting held on this 15th day of August 2024 by the following vote:

AYES:

NAYS:

ABSENT:

ATTEST:

By: _____
Maria M. Melendres
Board Secretary

APPROVED AS TO FORM

_____, 2024
HYDEE FELDSTEIN SOTO, City Attorney

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

Government Code 6505.5 and 6505.6

6505.5 (Amended by Stats. 1999, Ch. 83, Sec. 65. Effective January 1, 2000.)

If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated, or a certified public accountant to be the depository and have custody of all the money of the agency or entity, from whatever source. The Treasurer or certified public accountant so designated shall do all of the following:

- (a) Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit of the agency or entity.
- (b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all agency or entity money so held by him or her.
- (c) Pay, when due, out of money of the agency or entity held by him or her, all sums payable on outstanding bonds and coupons of the agency or entity.
- (d) Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement.
- (e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he or she holds for the agency or entity, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The officer performing the functions of Auditor or Controller shall be of the same public agency as the Treasurer designated as depository pursuant to this section. However, where a certified public accountant has been designated as Treasurer of the entity, the auditor of one of the contracting parties or of a county in which one of the contracting parties is located shall be designated as auditor of the entity. The auditor shall draw warrants to pay demands against the agency or entity when the demands have been approved by any person authorized to so approve in the agreement creating the agency or entity.

The governing body of the same public entity as the Treasurer and Auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the Treasurer and Auditor. However, where a certified public accountant has been designated as Treasurer, the governing body of the same public entity as the Auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the Auditor.

6505.6 (Added by Stats. 1979, Ch. 276.)

In lieu of the designation of a Treasurer and Auditor as set forth in Section 6505.5, the agency or entity may appoint one of its officers or employees to either or both of such positions. Such offices may be held by separate officers or employees or combined and held by one officer or employee. Such person or persons shall comply with the duties and responsibilities of the office or offices as set forth in subdivisions (a) to (d), inclusive, of Section 6505.5.


In the event the agency or entity designates its officers or employees to fill the functions of Treasurer or Auditor, or both, pursuant to this section, such officers or employees shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505.

M E M O

Alameda Corridor Transportation Authority

To: Governing Board

Meeting Date: August 15, 2024

From: Kevin L. Scott, Chief Financial Officer
Michael C. Leue, Chief Executive Officer 

Subject: APPROVE and ADOPT the ACTA Officer and Employee Publicly Available Pay Schedule for Fiscal Year 2024/2025

Recommendation:

Staff requests that the Governing Board approve and adopt the Publicly Available Pay Schedule for ACTA's Officers and Employees effective July 1, 2024. The Publicly Available Pay Schedule presented in Transmittal 1 sets the range of salaries allowed for each ACTA position. The proposed ACTA Pay Schedule applies a 2.4 percent increase to the Minimum and the Maximum limit for each position based on the Fiscal Year 2023-2024 Pay Schedule.

Background:

The California Public Employee Retirement System (CalPERS) requires its member agencies to have each agency's governing body approve its then-current employee Pay Schedule and thereafter make it publicly available. This item is brought before the Governing Board for approval to update the past Governing Board-approved Pay Schedule and to comply with CalPERS requirements.

Note that separately from approving the Pay Schedule, the ACTA Governing Board approves the salary budget line item during each annual Operating Budget approval process.

Discussion:

ACTA ORGANIZATION

ACTA's Organization Chart is shown in Transmittal 2. In January 2024, management reorganized the Accounts Payable office in response to a staff departure. The position of Accounts Payable Supervisor was eliminated due to declining workload in the department and the remaining duties were distributed to the two Accounts Payables Technicians. These two positions were each promoted to new positions, namely *Accounts Payable Lead Person* and *Accounts Payable Contracts Specialist*.

As previously presented to the Board, ACTA's management will be hiring an Executive Assistant/Analyst (previously referred to as Production Analyst) to perform data analysis and produce presentation graphics, reports, Governing Board meeting packages and provide contract administration support.

PAY SCHEDULE

ACTA management proposes salary ranges and a Pay Schedule for 12 positions including three officers and nine employees. The salary ranges for each position have historically been established by comparing the salaries for ACTA's position descriptions with relatively equivalent City of Los Angeles employee positions. The proposed ACTA salary ranges are not tied directly to the City of Los Angeles ranges because the City salaries take into consideration certain contractually negotiated terms and conditions that do not carry over to employment at ACTA. Therefore, the proposed salary ranges for each ACTA position also consider the consumer price index and changes in roles and responsibilities. The comparable City of Los Angeles employee positions and their pay scales are provided in Transmittal 3.

The ACTA Governing Board also asked staff to research other public agencies for a wider sampling of pay schedules. Transmittal 4 presents a comparison of the salary ranges for equivalent positions from several other agencies. Equivalent positions are not always available and comparisons between agencies must consider the specific requirements and level of responsibilities agencies place on each position.

Transmittal 5 indicates variances in maximum end of ranges for each position comparing ACTA to City of Los Angeles in first table and comparing ACTA to other agencies in second table. ACTA's maximums are within 10% of each comparable City of Los Angeles position, and ACTA is generally higher for each position. For the comparison with other agencies (excluding City of Los Angeles), ACTA is generally lower, with a few exceptions. Comparing the total of all position maximum salaries, ACTA is 4.9 percent higher than City of Los Angeles and 6 percent lower than the average of other agencies.

Budget Impact:

The approval of ACTA's Pay Schedule will not directly impact ACTA's budget. Salary increases are approved by the Governing Board separately through the annual Operating Budget.

Co-General Counsel Review:

ACTA's Co-General Counsel has reviewed this board report and there are no legal issues at this time.

Transmittals:

Transmittal 1 – ACTA Publicly Available Pay Schedule Effective July 1, 2024, for FY24-25

Transmittal 2 – ACTA Organization Chart

Transmittal 3 – City of Los Angeles Equivalent Job Description Positions Pay Schedule

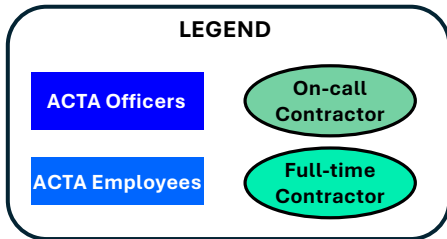
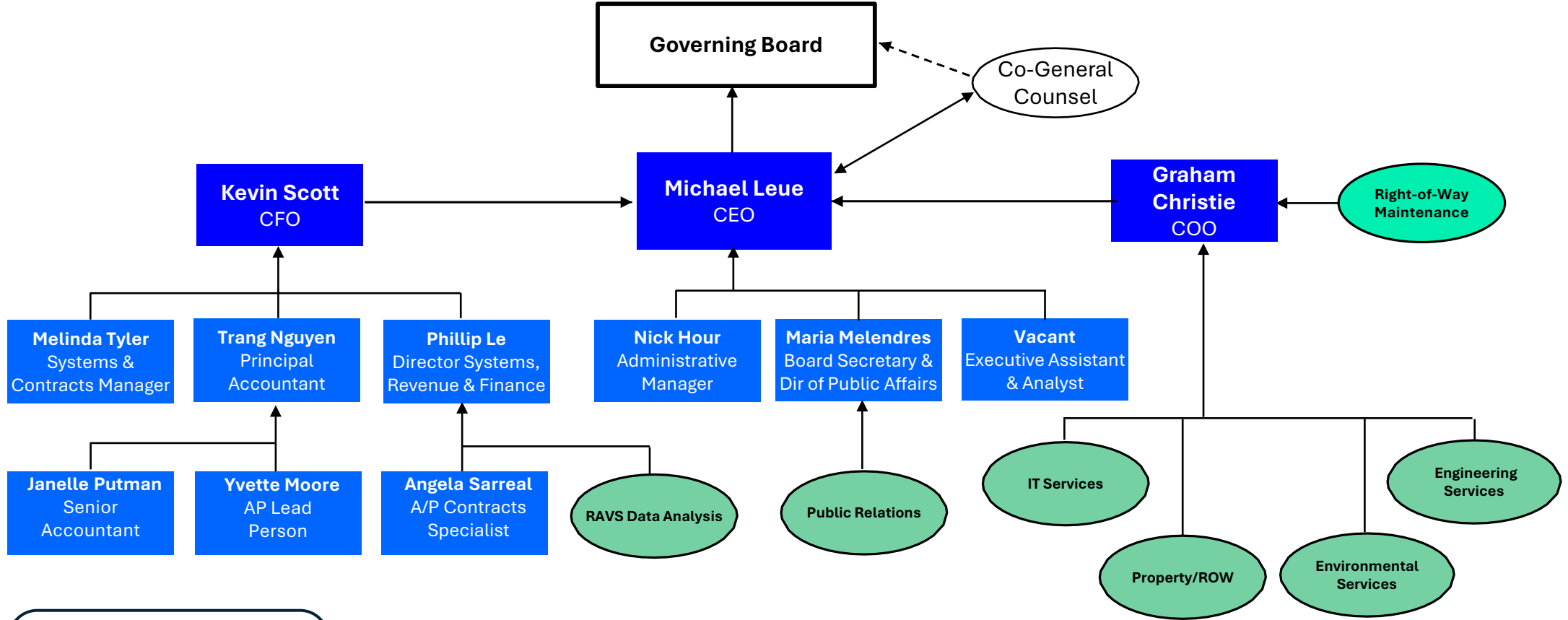
Transmittal 4 – Other Agencies Equivalent Job Description Positions Pay Schedules

Transmittal 5 – Statistical Comparison of ACTA with City of Los Angeles and Other Agencies

ACTA Officer and Employee Publicly Available Pay Schedule

Effective 07/01/2024

FLSA Exempt	Rate Type For PERS Reporting	Position	Pay Schedule			
			Minimum Annual	Maximum Annual	Minimum Hourly	Maximum Hourly
Yes	Monthly	Chief Executive Officer	\$236,896	\$355,766	\$113.89	\$171.04
Yes	Monthly	Chief Financial Officer	\$201,266	\$302,259	\$96.76	\$145.32
Yes	Monthly	Chief Operating Officer	\$201,266	\$302,259	\$96.76	\$145.32
Yes	Monthly	Dir. of Systems, Revenue, Finance	\$171,477	\$257,513	\$82.44	\$123.80
Yes	Monthly	Principal Accountant	\$144,737	\$217,334	\$69.59	\$104.49
Yes	Monthly	Senior Accountant	\$92,861	\$136,860	\$44.64	\$65.80
Yes	Monthly	Dir. of Public Affairs	\$124,602	\$187,100	\$59.90	\$89.95
Yes	Monthly	Administrative Manager	\$90,588	\$141,590	\$43.55	\$68.07
Yes	Monthly	Systems & Contracts Manager	\$127,465	\$195,270	\$61.28	\$93.88
No	Monthly	Accounts Payable Lead Person	\$86,464	\$127,112	\$41.57	\$61.11
No	Monthly	Accounts Payable Contract Specialist	\$81,344	\$119,368	\$39.11	\$57.39
No	Monthly	Executive Assistant - Analyst	\$81,369	\$118,953	\$39.12	\$57.19



City of Los Angeles Employee Positions with Job Responsibility Descriptions Similar to ACTA Positions

Los Angeles Employee Positions City of Los Angeles Administrative Code Ranges are publicly available at City of Los Angeles Memoranda of Understanding (MOU) Index

<https://cao.lacity.org/MOUs/index.htm>

MOU	CITY OF LA EFFECTIVE DATE	CLASS CODE	TITLE	MIN	MAX
36	March 24, 2024	0805-0	1st Deputy Gen Manager Harbor	\$227,237	\$332,242
36	March 24, 2024	0807-0	2nd Deputy Gen Manager Harbor	\$193,098	\$282,297
36	March 24, 2024	1608-0	Dir Financial Analysis & Reporting	\$164,513	\$240,516
36	March 24, 2024	1557-2	Financial Manager II	\$138,872	\$203,016
20	January 28, 2024	1523-2	Sr. Accountant II	\$90,055	\$131,669
36	March 24, 2024	1800-2	Public Information Dir II	\$119,036	\$174,013
36	March 24, 2024	9168-0	Contract Administrator	\$125,676	\$183,744
20	January 28, 2024	1523-1	Sr. Accountant I	\$83,144	\$121,521
37	March 24, 2024	1117-3	Executive Administrative Assitant III	\$75,982	\$111,039



Equivalent Position Salary Ranges (Max) from Other Local Agencies

LA City Position	Maximum Annual	City of Long Beach-Harbor Dept	Maximum Annual	Contra Costa Transportation Authority	Maximum Annual
1st Deputy Gen Manager Harbor	\$332,242	Executive Director-Harbor	\$430,699	Executive Director	\$356,463
2nd Deputy Gen Manager Harbor	\$282,297	Director of Financial Management	\$265,000	Chief Financial Officer	\$285,801
2nd Deputy Gen Manager Harbor	\$282,297	Deputy General Manager	\$265,568	Chief Financial Officer	\$285,801
Dir Financial Analysis & Reporting	\$240,516	Asst Director-Finance	\$235,002	Director, Programming	\$279,017
Financial Manager II	\$203,016	Manager of Accounting	\$185,000	Controller	\$229,755
Sr. Accountant II	\$131,669	Business Systems Spec V	\$130,339	Senior Accountant	\$157,895
Public Information Dir II	\$174,013	Mgr-Government Affairs	\$185,000	Director, External Affairs	\$251,317
Sr. Accountant II	\$131,669	Personnel Analyst IV	\$126,158	Director, Administrative Services	\$212,053
Contract Administrator	\$183,744	Mgr-Contract Compliance	\$185,000	Director, Programs	\$250,403
Sr. Accountant I	\$121,521	Administrative Analyst IV	\$126,158	Accounting Specialist	\$125,494
Sr. Accountant I	\$121,521	Administrative Analyst III	\$116,931	Accounting Specialist	\$125,494
Executive Administrative Assitant III	\$111,039	Executive Secretary-Harbor	\$115,002	Administrative Assistant	\$113,397
Total	\$2,315,544	Total	\$2,365,858	Total	\$2,672,890

Water Replenishment Dist of So Cal	Maximum Annual	SCAG	Maximum Annual
General Manager	\$449,207	Executive Director	\$399,271
Assistant General Manager	\$391,670	Chief Financial Officer	\$325,323
Assistant General Manager	\$391,670	Chief Operating Officer	\$332,816
Data & Technology Services	\$192,757	Chief Information Officer	\$310,427
N/A		Department Manager	\$212,458
Accounting Supervisor	\$134,792	Lead Accountant	\$142,652
Manager of External Affairs	\$202,871	Div Dir-Chief Gov & Public Affairs	\$265,109
Manager Admin & Human Resources	\$192,757	Program Manager	\$154,178
Senior IT Systems Administrator	\$168,544	Department Manager	\$198,381
Accounting Technician	\$97,750	Accountant III	\$108,094
Accounting Technician	\$97,750	Accountant III	\$108,094
Analyst	\$110,342	Executive Assistant	\$119,287
Total	\$2,430,109	Total	\$2,676,089



Statistical Comparison of ACTA with City of Los Angeles and Other Agencies

ACTA Position	Maximum	LA City Position		Average of Other Agencies	
		(ACTA Percent Difference)		(ACTA Percent Difference)	
Chief Executive Officer	\$352,837	5.8%	\$332,242	-16%	\$408,910
Chief Financial Officer	\$299,771	5.8%	\$282,297	-6%	\$316,949
Chief Operating Officer	\$299,771	5.8%	\$282,297	-6%	\$318,964
Dir. of Systems, Revenue, Finance	\$255,393	5.8%	\$240,516	0%	\$254,300
Principal Accountant	\$215,545	5.8%	\$203,016	3%	\$209,071
Senior Accountant	\$132,552	0.7%	\$131,669	-7%	\$141,420
Dir. of Public Affairs	\$185,560	6.2%	\$174,013	-22%	\$226,074
Administrative Manager	\$132,552	0.7%	\$131,669	-29%	\$171,287
Systems & Contracts Manager	\$193,662	5.1%	\$183,744	-4%	\$200,582
Accounts Payable Lead Person	\$126,065	3.6%	\$121,521	9%	\$114,374
Accounts Payable Contract Specialist	\$120,945	-0.5%	\$121,521	7%	\$112,067
Executive Assistant - Analyst	\$120,000	7.5%	\$111,039	5%	\$114,507
Total	\$2,434,653	4.9%	\$2,315,544	-6%	\$2,588,504

M E M O

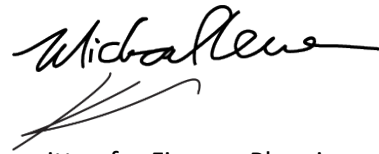
Alameda Corridor Transportation Authority

To: Governing Board

Meeting Date: August 15, 2024

From: Michael C. Leue, Chief Executive Officer
Kevin L. Scott, Chief Financial Officer

Subject: APPROVE Continuation of an Ad Hoc Committee for Finance Planning and Member Appointments



Recommendation:

The Governing Board Chair will present and lead a discussion on the continuation of the Ad Hoc Committee for Finance Planning. If continuation of the Ad Hoc Committee is approved, the Board is also requested to nominate and approve three Governing Board members to serve on the Ad Hoc Committee.

Discussion:

At the September 14, 2023, the ACTA Governing Board approved formation of an advisory Ad Hoc Committee for Finance Planning. ACTA staff is evaluating finance plans for anticipated upcoming bond financing and staff will keep the Ad Hoc Committee informed as the process progresses. During the next two years, the Committee will meet a limited number of times with the CEO, CFO and other members of ACTA's financing team for briefings on potential financing structures and the bond financing process.

The Ad Hoc Committee will provide advice to the financing team and offer informed opinions when bond financing proposals are brought to the Governing Board for approval. The Committee will be in place for a limited period of time until a proposed financing is complete, currently projected to take place in 2026, at which time the Ad Hoc Committee will be discontinued.

When the Committee was formed in September 2023, the Governing Board appointed Board Members Renwick, Colonna and Cano to serve on the Committee.

Budget Impact

There is no direct impact to the Program Budget. The Ad Hoc Committee will not make decisions on financing.

Co-General Counsel Review:

ACTA's Co-General Counsel has reviewed this Board Report and there are no legal issues at this time.

M E M O

Alameda Corridor Transportation Authority

To: Governing Board

Meeting Date: August 15, 2024

From: Graham M. Christie, Chief Operating Officer *Graham M. Christie*

Subject: APPROVE Third Amendment to Agreement No. C0889 with Pacific Railway Enterprises, Inc. for railroad signal and communication design and support services extending the term by 3 years and increasing not-to-exceed compensation by \$4,000,000

Recommendation:

Approve the Third Amendment to Agreement No. C0889 with Pacific Railway Enterprise, Inc. (PRE), for an additional term of 3 years and additional compensation in the amount of \$4,000,000 for continuation of signal design services and authorize the Chief Executive Officer or his designee to execute the amendment.

The Third Amendment increases the agreement compensation by \$4,000,000 to a total not-to-exceed amount of \$5,005,200. Of the total agreement amount, approximately \$2,388,143 will be funded by ACTA Fees and Charges as non-rail or capital expenditures within the Maintenance of Way program, while \$2,617,057 will be reimbursed by the two railroads (BNSF and Union Pacific).

Discussion:

The ACTA Governing Board approved execution of agreement C0889 with PRE on November 15, 2019, a First Amendment on February 24, 2023 and a Second Amendment on December 14, 2023. Under the Agreement, PRE performs signal design services for both the Maintenance of Way Program and the Dolores Yard Crossover Project. The First Amendment to Agreement C0889 increased the contract authorization amount by \$125,000 which was to cover design costs for the UPRR Dolores Yard Crossover Project.

The Second Amendment to Agreement C0889 increased the contract authorization amount by \$630,200 to cover increased project design costs for PRE related to the Dolores Yard Project due to unforeseen utility conflicts and delays to the project.

The subject Third Amendment proposes to increase the contract authorization amount by \$4,000,000 and exercise the 3-year option to extend the duration of the contract to cover PRE's urgently needed work on the Maintenance of Way Program (MOW). The proposed design work will provide signal plan designs and support at various control points within the Alameda Corridor. Many of the original signal and communication components are obsolete and require replacement. Manufacturers have discontinued production of various components and no longer provide support for ACTA's current signal systems. Due to the industry converting to more modern signal and communication systems, ACTA will need to update the Alameda Corridor signal system, which requires design support services.

PRE provides railroad signal engineering design services for ACTA, Port of Los Angeles, Port of Long Beach, Metrolink, BNSF and Union Pacific Railroad. The last competitive selection process for the on-call signal engineering design services occurred in August 2019. At that time, ACTA released a Request for Proposals (RFP) for On-Call Signal Engineering Design Services. Two responses were received in September 2019. A thorough evaluation was conducted by the four-member review panel consisting of representatives from ACTA, the Port of Los Angeles, the Port of Long Beach, and the BNSF Railway Company. PRE was unanimously ranked as the recommended firm to provide the services.

Budget Impact:

There is no impact to the FY24 Budget for the additional signal design work proposed to be performed by PRE for either the MOW improvements or the Dolores Yard Crossover Project.

The MOW improvements are included in the MOW budget, which is incorporated into the Governing Board approved FY24/25 ACTA Operating Budget. These costs are either paid for by railroads directly or paid for by ACTA fees. In May 2024, ACTA submitted an application for a Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program grant to fund the MOW improvements; if ACTA is selected to receive this CRISI grant, then ACTA's actual expenditures will be less than budgeted.

The Dolores Yard Crossover Project costs will be fully reimbursed to ACTA by UPRR; ACTA will utilize the Local Agency Investment Fund (LAIF) account to pay PRE for the services and then reimburse the account when payment is received from UPRR.

Co-General Counsel Review:

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

Transmittals:

Transmittal 1 – Third Amendment to Agreement C0899 between ACTA and PRE

THIRD AMENDMENT
TO AGREEMENT NO. C0889
BETWEEN
THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY
AND PACIFIC RAILWAY ENTERPRISES, INC.

THIS THIRD AMENDMENT to Agreement No. C0889 ("Third Amendment") is made and entered into by the Alameda Corridor Transportation Authority ("ACTA"), acting by and through its Governing Board ("ACTA Board"), and Pacific Railway Enterprises, Inc. ("Consultant").

RECITALS

WHEREAS, ACTA and Consultant entered into that certain Agreement No. C0889 ("Original Agreement"), dated January 9, 2020, whereby Consultant agreed to provide ACTA with on-call rail signal design engineering services and on-site support services for the rail signal systems installed along the Alameda Corridor; and

WHEREAS, the Original Agreement was amended by that certain First Amendment to Agreement No. C0889 ("First Amendment"), dated March 3, 2023, and that certain Second Amendment to Agreement No. C0889 ("Second Amendment"), dated December 21, 2023; and

WHEREAS, the Original Agreement, First Amendment, and Second Amendment are collectively referred to herein as the "Agreement"; and

WHEREAS, pursuant to Sections 4.2(b) and 4.3 of the Agreement, the ACTA Board has the option to renew the term of the Agreement for one (1) renewal period of three (3) years ("Option") upon ACTA Board approval prior to the expiration of the Agreement; and

WHEREAS, the Agreement is set to expire on January 8, 2025, and by this Third Amendment, the ACTA Board desires to exercise the Option and the parties hereto desire to revise the compensation provisions, including increasing the total compensation payable under the Agreement and correcting a drafting error in the First Amendment and Second Amendment.

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

1. By the ACTA Board's approval of this Third Amendment, the parties hereto agree that (a) the ACTA Board has exercised the Option, and (b) the term of the Agreement is hereby extended to January 8, 2028.

2. The term "Article 5 Compensation" in Section 1 of the First Amendment and Section 1 of the Second Amendment is hereby deleted and replaced in its entirety with "Section 5.1". Correspondingly, as of March 3, 2023, Sections 5.2 to 5.7 of the Original Agreement shall have remained, and shall continue to remain, a part of the Agreement.

3. Section 5.1 is hereby removed and replaced in its entirety, as follows:

“For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant, and Consultant shall accept, a sum not to exceed Five Million Five Thousand Two-Hundred Dollars (\$5,005,200). The total sum payable under this Agreement shall be determined by Project Directives and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.”

4. Except as amended herein, all remaining terms and conditions of Agreement No. C0889 shall remain in full force and effect.

5. The effective date of this Third Amendment shall be the date of its execution by ACTA’s Chief Executive Officer or his designee.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Agreement No. C0889 on the date to the left of their signatures:

ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY

Date: _____

By: _____
Michael D. Leue, P.E.
Chief Executive Officer

Attest: _____
Secretary

PACIFIC RAILWAY ENTERPRISES,
INC.

Date: _____

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

APPROVED AS TO FORM


_____, 2024
DAWN MCINTOSH, Long Beach City Attorney

By _____
Thomas Y. Oh, Deputy
ACTA Co-General Counsel

M E M O

Alameda Corridor Transportation Authority

Meeting Date: August 15, 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

Recommendation:

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

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 the basis of 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 RFP

Evaluation Summary

15-Aug-24

Evaluation 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

Meeting Date: August 15, 2024
From: Kevin Scott, Chief Financial Officer 
Subject: Approve Agreement No. C0925 with Willis Towers Watson Insurance Services West, Inc. for Insurance Brokerage Services

Recommendation:

Approve Agreement No. C0925 with Willis Towers Watson Insurance Services West, Inc. (Willis) for Insurance Brokerage 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.

Discussion:

In May 2024, ACTA published a Request for Proposals (RFP) for insurance brokerage services. ACTA advertised its 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 opportunities websites. Several firms registered to review the RFP on the ACTA website and two responses were received on or before the due date of June 25, 2024. A three-member proposal review panel consisting of ACTA's Chief Executive Officer, Chief Financial Officer and Chief Operating Officer reviewed and evaluated the responses. The firms were not interviewed because the written proposals provided adequate information to evaluate the proposers. Each firm was evaluated based on firm qualifications; project organization and management; experience and qualifications of proposed personnel; fees; and clarity and comprehensiveness of the proposal. All three evaluators ranked Willis first. As a result, the review panel recommends awarding the proposed agreement to Willis to provide ACTA with insurance brokerage services. Willis has been ACTA's broker of record since 2005.

The proposed agreement with Willis will be for a five-year term and compensation will be a fixed annual fee of \$85,000 (four quarterly payments of \$21,250) plus an additional annual payment of up to \$15,000 based on performance criteria established in the agreement.

Budget Impact:

Funds for the current fiscal year in the amount of \$100,000, including the base services and the annual performance-based payment, are included in the FY25 Operating Budget.

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 – Insurance Broker Services Agreement No. C0925



ACTA Insurance Broker of Record RFP

Evaluation Summary

15-Aug-24

Evaluation 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	73	83	78	78	2
2 WTW	88	85	90	88	1

AGREEMENT NO. C0925

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, 2010 Main Street, Suite 1050, Irvine, California 92614 ("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:

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 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.

4. 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.

5. 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 Five Hundred Thousand Dollars (\$500,000).

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. C0925, 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 sent to the following address:

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

In addition to, or in lieu of, mailing invoices per the above instructions, Consultant may email invoices to accountspayable@acta.org, and Consultant shall be responsible for confirming receipt of emailed invoices. ACTA shall not be responsible for invoices incorrectly emailed or not received due to technical issues, regardless of the source of such issues.

6. 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 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. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 8, 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 One Million Dollars (\$1,000,000) 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, 411 West Ocean Boulevard, 9th 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 Section 9 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.

(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.

(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.

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 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. 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 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.

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 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

WILLS TOWERS WATSON
INSURANCE SERVICES WEST, INC.

Date: _____

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

APPROVED AS TO FORM

_____, 2024
HYDEE FELDSTEIN SOTO, Los Angeles City Attorney

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

Rev. 02/19

Exhibit A

SCOPE OF WORK

ACTA's Chief Financial Officer will direct the efforts of the Consultant, with oversight by the Chief Executive Officer.

The following areas are intended to be guidelines as to the type of assignments for which the Consultant will provide insurance brokerage assistance to ACTA. The Scope of Work shall include, but is not limited to:

1. Assign an Account Manager who will be responsible for overseeing ACTA's account and for communicating with ACTA staff. The Account Manager, along with any other team member assigned, must be readily available to provide ACTA staff with expertise and advice. Commonly requested assistance include:
 - a. Reviewing contracts, leases, and agreements for insurance and liability issues.
 - b. Devising insurance language and requirements to ensure minimal liability.
 - c. Interpreting policy and coverage usage and applicability.
2. 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.
3. Perform all on-site inspections and data gathering necessary to prepare underwriting submissions to insurance markets.
4. Recommend an overall program structure to address ACTA's property and liability risks.
5. 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 these specifications to a wide array of qualified, financially sound insurance markets.
 - c. Two weeks or more before renewal date, prepare and present a written report 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.

6. Verify the accuracy of rates and premiums. Assist in establishing estimated costs and payrolls for premium calculations.
7. Provide specimens of all policies at least two weeks prior to renewal or placement.
8. Use best efforts in working with carriers to deliver binders on or before the effective date of coverage being placed, subject to placement.
9. Assist ACTA in obtaining policies promptly once bound, i.e., in 30 days or less.
10. 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.
11. Provide coverage summaries for all new placements and updates on changes to existing policies as part of the written report identified in Paragraph 4c.
12. 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.
13. 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 following receipt thereof from ACTA.
14. Coordinate services provided by insurance carriers including safety, claims adjusting, management information reporting, case management, health care provider selection and others.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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 30th 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.
20. Cooperate in any transition to another Broker at the expiration of the Agreement. Deliver all data/documents as set forth herein.
21. Promptly respond to ACTA's questions related to coverage placed by Broker or the placement process.
22. Answer questions or obtain answers from underwriters for policy coverage questions, including written responses when requested.
23. 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.
24. Review premium and exposure audits, rating adjustments, dividend calculations and loss data.
25. Attend meetings with ACTA staff or Governing Board as requested.
26. 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).
27. At least 90 days prior to program anniversary, 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.
 - 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.

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 Eighty-Five Thousand Dollars (\$85,000), to be invoiced and paid in quarterly installments of Twenty-One Thousand Two-Hundred Fifty Dollars (\$21,250) 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 Fifteen Thousand Dollars (\$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 (\$750.00). 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.

Exhibit 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 SUBCONTRACTOR MONITORING REPORT**

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

Contract 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

<p>STATE OF CALIFORNIA)) ss COUNTY OF LOS ANGELES)</p> <p style="text-align: center;">Place Notary Seal and/or Stamp Above</p>	<p>Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20__ by</p> <p>(1) _____ Name of Signer (1)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)</p> <p style="text-align: center;">(and)</p> <p>(2) _____ Name of Signer (2)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)</p> <p>Signature _____</p>
--	--

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: _____

M E M O

Alameda Corridor Transportation Authority

To:	Governing Board
Meeting Date:	August 15, 2024
From:	Michael C. Leue, Chief Executive Officer 
Subject:	APPROVE Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan for the Pier B On-Dock Rail Support Facility Project

Recommendation:

Staff recommends 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; (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. A separate Board item addresses the need for a Memorandum of Agreement for the Pier B Locomotive Service Facility Project.

Discussion:

Staff requests approval of the Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan for the Port of Long Beach Pier B On-Dock Rail Support Facility Project (Project) (SCH No. 2009081079). Port of Long Beach (POLB) is the lead agency for the Project and prepared an EIR to review that Project. Alameda Corridor Transportation Authority (ACTA), as an agency that must also make a discretionary approval for the Project, does not need to prepare its own EIR for the Project, but it must independently review the POLB EIR and makes findings that the POLB EIR sufficiently reviews the environmental aspects of the Project relevant to ACTA's approval, prior to ACTA's formal project approval.

Although POLB is the lead agency for this Project, components of the Project affect facilities under the jurisdiction of ACTA, as granted by Use Permit; therefore, ACTA is a responsible agency under the California Environmental Quality Act (CEQA) and is required to take action to review environmental evaluation documents prior to administering permits. The Project's purpose is to reconfigure, expand, and enhance the capacity of the existing Pier B Rail Facility located primarily within POLB. POLB, as the Lead Agency under CEQA, analyzed the Project in the 2018 Final Environmental Impact Report (FEIR) and in a 2023 Addendum to that FEIR. The 2023 Addendum proposed minor additions to the Project's boundaries and construction activities, including changes affecting several Port of Los Angeles and POLB joint properties.

ACTA, as a Responsible Agency under CEQA, is required to consider POLB's CEQA document, prior to acting on a project as a Responsible Agency. For the Project to be completed, ACTA, in its role as a Responsible Agency, would be required to issue permits and/or approvals to the POLB.

Environmental Assessment:

ACTA, acting by and through its Governing Board, has reviewed the FEIR (State Clearinghouse No. 2009081079) prepared for the Pier B On-Dock Rail Support Facility Project that was certified by POLB on January 12, 2018, and the Addendum considered on August 28, 2023, under CEQA (Pub. Resources Code, § 21000 et seq.). Based on this review, ACTA has made certain findings pursuant to Public Resources Code Section 21081 and Title 14 California Code of Regulations as well as findings regarding the Statement of Overriding Considerations pursuant to Public Resources Code Section 21081 and Title 14 California Code of Regulations Section 15093. In accordance with Public Resources Code Section 21081 and Title 14 California Code of Regulations Section 15091, changes or alterations have been required in, or incorporated into the Project in the form of feasible mitigation, which would reduce significant adverse environmental impacts identified in the FEIR. Some of the mitigation measures contained in the Mitigation Monitoring and Reporting Plan of the certified Final Environmental Impact Report are applicable to project elements occurring on property under ACTA jurisdiction, however, each of these applicable measures are the responsibility of the Port of Long Beach to implement. The mitigation measures applicable to ACTA jurisdictions, as identified in the Mitigation Monitoring and Reporting Plan (Transmittal 2) will be enforced through the entitlement(s) issued for the Proposed Project. To certify compliance, documentation that mitigation measures have been implemented, records will be maintained by the Port of Long Beach to ensure potential environmental impacts are mitigated in accordance with the performance standards identified in the FEIR.

In accordance with Public Resources Code Section 21081 and Title 14 California Code of Regulations Section 15093, ACTA, in determining whether or not to approve the Project, balanced the economic, social, technological, and other Project benefits against its unavoidable environmental risks, and finds that each of the benefits of the project outweigh the significant adverse environmental effects. No additional feasible mitigation measures or alternatives to the proposed Project, other than those included in the FEIR, have been identified that can further mitigate the potentially significant adverse project impacts on hazards during the proposed Project while meeting the basic objectives of the proposed Project. ACTA further finds that all findings are supported by substantial evidence as analyzed in the FEIR and in the administrative record as a whole. When making CEQA findings required by Public Resources Code Section 21081(a), a public agency shall specify the location and custodian of the documents or other materials, which constitute the record of proceedings upon which its decision is based. These records are in the care of Michael Leue, ACTA Chief Executive Officer, 3760 Kilroy Airport Way, Ste 200, Long Beach, California 90806. ACTA further finds that there have been (1) no substantial changes to the Project which would require major revisions of the FEIR, (2) no substantial changes with respect to the circumstances under which the proposed Project is being undertaken which would require major revisions in the FEIR, and (3) no new information has become available which was not known or could have been known at the time the FEIR was certified as complete.

Budget Impact:

There is no direct impact on the ACTA Operating Budget.

Co-General Counsel Review:

ACTA's Co-General Counsel has reviewed this Board Report and there are no legal issues at this time.

Transmittals

Transmittal 1 – Findings of Fact, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Plan; Pier B On-Dock Rail Support Facility Project

Transmittal 2 – ACTA Pier B EIR Mitigation Monitoring and Reporting Plan

Transmittal 3 – Presentation on Pier B On-dock Rail Support Facility Project

**FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS, AND
MITIGATION MONITORING AND REPORTING PLAN
PIER B ON-DOCK RAIL SUPPORT FACILITY PROJECT
SCH No. 2009081079**

Introduction

On January 22, 2018, the Port of Long Beach (POLB) Board of Harbor Commissioners (the Board) approved the Pier B On-Dock Rail Support Facility project (proposed Project). The Board certified the Final Environmental Impact Report (EIR) (State Clearinghouse No. 2009081079) per the California Environmental Quality Act (CEQA), made specific findings regarding the significant environmental impacts and the mitigations measures to reduce or avoid such impacts, adopted a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program to track the mitigation, and approved the Application Summary Report and the Harbor Development Permit per the California Coastal Act and the POLB certified Port Master Plan. POLB subsequently completed an Addendum to the EIR in 2023, which proposed minor additions to the project's boundaries and construction activities, including changes affecting property under ACTA jurisdiction. ACTA has independently reviewed the Draft and Final Pier B On-Dock Rail Support Facility EIR and the 2023 Addendum for legal adequacy as it pertains to the proposed Project elements relevant to ACTA's jurisdiction and has prepared findings related thereto.

Project Overview and Objectives

The proposed Project involves reconfiguring and expanding the Pier B Rail Yard from 82 acres to approximately 182 acres to maximize on-dock intermodal operations by providing a sufficient facility to accept and handle longer container trains (up to 10,000 feet) and accommodate the expected demand of cargo to be moved via on-dock rail through development of a rail yard that is effective and fiscally prudent. The Project would expand and reconfigure the Pier B Railyard to add 31 yard tracks, provide 10,000-foot-long receiving/departure tracks and widen the existing rail bridge over the Dominguez Channel to accommodate one additional track. The Project would include roadway realignments and closures and property acquisitions.

The Alameda Corridor and the Alameda Corridor Transportation Authority

The Alameda Corridor is a fully grade-separated main line rail corridor connecting the Ports of Long Beach and Los Angeles to the Class 1 railroad yards in downtown Los Angeles. South of Interstate 405 (I-405), the Alameda Corridor diverges, with one set of tracks continuing south toward Terminal Island and the western part of the Port of Los Angeles (POLA), and a second set of tracks, the Long Beach Lead, turning southeast to enter the Port of Long Beach (POLB). The Long Beach Lead terminates just south of the Pier B Rail Yard.

The Alameda Corridor was built and is operated by the Alameda Corridor Transportation Authority (ACTA), which is a joint-powers authority (JPA) formed by the Cities of Long Beach and Los Angeles and the Ports of Long Beach and Los Angeles. ACTA operates the Alameda Corridor under a Use and Operating Agreement among five parties: the Ports of Long Beach and Los Angeles, the two Class 1 railroads (BNSF and Union Pacific) and ACTA.

Construction of the Alameda Corridor was funded by municipal bonds and as such, ACTA is charged with ensuring that all tracks are available and used efficiently so as to generate maximum funds to pay debt

service on the outstanding bonds. ACTA also has a responsibility to the Class 1 Railroads to maintain unimpeded and efficiently functioning tracks for their operations.

Basis of Review

The proposed Project would begin just west of Dominguez Channel at the junction of the Long Beach Lead track with the Alameda Corridor. The existing Alameda Corridor tracks and the Dominguez Channel rail bridge would be modified to accommodate one new track. The track addition would include widening of the rail bridge across the Dominguez Channel. These improvements occur on ACTA property. As such, a modification to ACTA's Use and Operating Agreement is required to reflect the improvements.

Modifications to ACTA's Use and Operating Agreement requires 1) approval of a Notice of Mutual Agreement by the four non-ACTA parties to the Agreement and 2) approval to implement the change by ACTA's Governing Board. These two actions are discretionary in nature and as such, require assessment pursuant to CEQA. Therefore, ACTA has independently reviewed the Draft and Final Pier B On-Dock Rail Support Facility EIR for legal adequacy as it pertains to the proposed Project elements under ACTA's jurisdiction. It should be noted that the Project area under ACTA jurisdiction represents a small portion of the overall Project footprint.

Project Elements under ACTA Jurisdiction

Specific elements that would occur under ACTA jurisdiction are as follows:

- Realign the existing Alameda Corridor Transportation Authority (ACTA) mainline tracks
- Widen the existing Dominguez Channel Bridge to accommodate one additional track
- Reconfigure existing tracks and add additional tracks to allow five arrival/departure tracks with direct connection to the ACTA mainline tracks
- Realign/reconfigure the Long Beach Lead tracks and the Terminal Island Lead Tracks (TILT) tracks

Potential Impacts Relevant to ACTA's Jurisdiction

Table 1 (Attachment A) outlines all impacts that are relevant to Project components within ACTA's jurisdiction and includes a summary of the impact. Where applicable, this summary discusses the impacts as they specifically relate to project elements or impacts within ACTA's jurisdiction.

Construction Impacts within the Alameda Corridor

Because construction within ACTA's jurisdiction would occur in multiple construction phases, construction of such components can be assumed to contribute to all general construction impacts, however, construction within ACTA's jurisdiction represents a small portion of overall Project construction. Construction impacts include geology and soils, air quality, hydrology and water quality, biological resources (specifically impacts to bats during rail bridge widening), ground transportation, public services, noise, hazards and hazardous materials, population and housing, utilities, cultural resources and greenhouse gas emissions.

Operational Impacts within the Alameda Corridor

Operational Impacts within ACTA's jurisdiction would be limited to the movement of Project trains along the Alameda Corridor. The proposed Project would add 10 daily trains to the baseline of 42 total daily train operations along the Alameda Corridor. For the purposes of the applicable analyses in the EIR,

Project trains were considered new trains rather than trains being relocated from off-dock railyards. In other words, no reduction in trains generated at downtown yards was assumed as a result of the project and no credit was taken for any reduction of such trains in the analyses. The primary resource areas that would be affected by Project operations within ACTA’s jurisdiction are air quality and health risk, greenhouse gas emissions and noise.

Thresholds Specific to the Alameda Corridor

The Pier B EIR includes two noise threshold specifically addressing the Project’s operational noise within the Alameda Corridor as follows:

NOISE-6: For operational noise within the Alameda Corridor, a significant impact would occur if the proposed Project would either: (a) generate noise within the FTA-designated Severe Impact range (see Figures 3.8-4 and 3.8-5); or (b) result in an increase of 3 dB or more in Leq over baseline ambient conditions measured at the property line of noise-sensitive receptor locations.

NOISE-7: For operational noise within the COLB, COLA, or Alameda Corridor portions of the Project influence area, a significant impact would occur if the proposed Project would generate noise exceeding 45 dBA interior noise levels at schools during the hours of 7:00 a.m. to 10:00 p.m.

The noise analysis completed for the EIR using the Federal Transit Administration (FTA) guidelines found that the additional 10 daily trains operating within the Alameda Corridor as a result of the Project would result in a less than 1-decible (dB) increase in noise along the corridor and a less than 1-dB increase in the overall ambient noise environment and at receptors along the corridor and no change to interior noise levels at nearby schools. Both impacts were determined to be less than significant.

Summary of Significant and Unavoidable Impacts and Statement of Overriding Considerations

When certifying the EIR, POLB adopted a Statement of Overriding Considerations due to findings of significant and unavoidable impacts related to air quality and health risk and greenhouse gas emissions. The Project was determined to offer benefits that outweigh the unavoidable significant impacts, including fulfilling the Port’s legal mandates and objectives under the Tidelands Trust, implementing the Clean Air Action Plan (CAAP), improving local roadway safety, promoting a mode shift for container transport from truck to rail, supporting the City’s General Plan Mobility Element, supporting the California Sustainable Freight Action Plan and contributing to the Community Grants Program in the amount of \$1.4 million.

Mitigation Measures Applicable to ACTA

The EIR included a variety of mitigation measures to reduce significant impacts. As stated above, impacts to air quality and greenhouse gas emissions remained significant and unavoidable even with the application of all feasible mitigation. Some of the approved mitigation measures are applicable to project elements occurring on property under ACTA jurisdiction, however, each of these applicable measures are the responsibility of the Port of Long Beach to implement. ACTA is not responsible for implementing any mitigation measures (See Table 1).

In addition to the mitigation measures, a Special Condition of the Harbor Development Permit requires a mandatory 5-year technology review to identify new air quality technological advancements and

consider their feasibility for implementation. While ACTA is not responsible for conducting the technology reviews, future technological advancements could be identified that are relevant to or could have an impact on operations within the Alameda Corridor.

Environmental Justice

As stated in the certified EIR, significant and unavoidable air quality impacts would constitute a disproportionately high and adverse effect on low-income and/or minority populations. Even with the application of mitigation measures to reduce pollutant emissions, residual impacts from CO and NOx would continue to be significant and unavoidable (POLB, 2018). While the EIR identifies that the Project would have residual significant and unavoidable impacts to air quality disproportionately affecting low-income and minority populations near the Project site, the Project may actually produce air emissions and health impacts that are less than the values presented in the EIR with the replacement of drayage truck trips with rail trips from the marine terminals served by the Project. The POLB will implement all required mitigation measures to ensure that environmental impacts associated with the Project are reduced and continue to provide public engagement; access to information, educational opportunities, and access to coastal resources, while advancing environmental justice for communities surrounding the POLB.

Findings

CEQA prohibits a public agency from approving or carrying out a project for which a CEQA document has been completed and identifies one or more significant adverse environmental effects of the project, unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding (CEQA Guidelines section 15091).

These findings provide the written analysis and conclusions of ACTA, acting by and through its Governing Board, regarding the environmental impacts of the Proposed Project and the mitigation measures directly applicable to the Project elements that would directly impact properties under ACTA jurisdiction. Although construction and operational activity of the Proposed Project that would occur on property under ACTA jurisdiction is minimal in relation to the Project as a whole, air emissions occurring specifically under ACTA jurisdiction cannot be parsed out. As such, ACTA is making findings related to all significant and unavoidable impacts contained in the FEIR. The FEIR concluded that the Proposed Project, after mitigation, may result in the following significant adverse environmental impacts:

- Construction of the Proposed Project would produce emissions that exceed a South Coast Air Quality Management District (SCAQMD) significance threshold AQ-1: Construction emissions would exceed SCAQMD thresholds for volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NOx), and fine particulate matter less than 2.5 microns in diameter (PM2.5) during Phases 1 and 2. Construction emissions during Phase 3 would exceed the SCQAMD threshold for NOx and CO.
- Construction of the Proposed Project would result in offsite ambient air pollutant concentrations that exceed an SCAQMD significance threshold AQ-2: Impacts related to the maximum 1-hour state nitrogen dioxide (NO2), 1-hour federal NO2, and annual NO2 concentrations during Phases 1 and 2 would be significant and unavoidable. Impacts related to the maximum 1-hour state NO2, 1-hour federal NO2, and annual NO2 concentrations during Phases 3 would be significant and unavoidable.

- Operation of the Proposed Project would produce emissions that exceed an SCAQMD significance threshold AQ-3: The cumulative operations of projects, including the Proposed Project, would result in significant cumulative air quality impacts for VOC, CO, NOx, particulate matter less than 10 microns in diameter (PM10), PM2.5. The Proposed Project, by itself, would contribute ambient concentrations of these six pollutants during operation, although only CO and NOx would exceed the significance thresholds). Emissions from operation of the Proposed Project would make a cumulatively considerable and unavoidable contribution to a significant cumulative impact for VOC, CO, NOx, PM10, PM2.5, and sulphur oxides (SOx).
- Operation of the Proposed Project would result in offsite ambient air pollutant concentrations that exceed an SCAQMD significance threshold AQ-4: Operation of cumulative projects, including the Proposed Project, would result in significant cumulative air quality impacts related to exceedances of the significance thresholds for NOx, PM10, and PM2.5. Construction of the Proposed Project would make a cumulatively considerable and unavoidable contribution to a significant cumulative impact for NOx, PM10, and PM2.5.
- Cumulative significant and unavoidable air quality impacts from construction and operation of the Proposed Project would result in significant on-site and offsite ambient cumulative air quality impacts for VOC, CO, NOx, PM10, PM2.5, and SOx; as well as health risk impacts for individual cancer risk, population cancer burden, and non-cancer effects from acute exposure.
- Cumulative significant and unavoidable air quality impacts from construction and operation of the Proposed Project would constitute a disproportionately high and adverse effect on low-income and/or minority populations.
- Construction and modification activities would contribute to the loss of migratory birds nesting in trees or structures BIO-1: Construction of the Proposed Project is not likely to affect any listed, candidate, sensitive, or species of special concern or their habitat. However, the loss of migratory birds nesting in trees or structures, as well as the loss of bats during modifications of bridges (particularly the Dominguez Channel rail bridge), or any of their habitat, would be potentially significant.
- Construction of the Proposed Project may result in the permanent loss of, or loss of access to, a paleontological resource of regional or statewide significance CR-1: Construction of the Proposed Project may result in the permanent loss of, or loss of access to, a paleontological resource of regional or statewide significance. The Proposed Project site has a high potential for yielding scientifically important remains of extinct Ice Age land mammals from depths beginning at 5 feet.

Impact AQ-1: Construction of the Proposed Project would produce air pollutants that exceed an SCQAMD significance threshold.

Finding: ACTA finds that (1) the construction of the Proposed Project would generate emissions that exceed the SCAQMD thresholds for VOC, CO, NOx, possibly SOx and (PM2.5 during Phases 1 and 2; and for CO and NOx during Phase 3; (2) mitigation measures were incorporated into the Proposed Project that serve to reduce these impacts, but even with the inclusion of these conditions, the impact cannot be reduced to less than significant levels; (3) such mitigation measures would be implemented on property under ACTA jurisdiction but are not ACTA's responsibility to implement; and (4) no feasible measures were identified that would mitigate this significant adverse impact to insignificance.

Explanation: The combined construction emissions would exceed SCQAMD thresholds for CO and NOx during all construction phases. Therefore, these emissions would represent significant air quality impacts. Exhaust from construction equipment is the largest contributor to these emissions. Based on the number and types of related projects that could be under construction concurrent with the Proposed Project, it is likely that the cumulative projects, including the Proposed Project, would together exceed the SCAQMD thresholds for VOC, CO, NOx, PM10, PM2.5. Because the area surrounding the Proposed Project site is predominantly minority and low income, Impact AQ-1 would constitute a disproportionately high and adverse effect on minority and low-income populations. The FEIR concluded that, even with the application of feasible mitigation measures, this impact cannot be entirely avoided or reduced to less-than-significant levels. Five feasible mitigation measures that could potentially reduce the impact were evaluated, but they would not reduce the level to less than significant. These mitigation measures are described in the FEIR (Mitigation Measure AQ-1 through AQ-5). Though these measures would not remove significant air pollution of hazardous emissions, no other feasible mitigation measures or project alternatives have been identified that would reduce the impact to less than significant. Therefore, significant air pollution effects involving the release of hazardous emissions into the environment is expected to remain significant and unavoidable regionally following mitigation.

Impact AQ-2: Construction of the Proposed Project would result in offsite ambient air pollutants that exceed an SCQAMD significance threshold.

Finding: ACTA finds that (1) the construction of the Proposed Project would generate offsite ambient pollutant concentrations that exceed the SCAQMD thresholds for 1-hour and annual NO2 and annual PM10 during Phases 1 and 2; and 1-hour and annual NO2 during Phase 3; (2) mitigation measures were incorporated into the Proposed Project that serve to reduce this impacts, but even with the inclusion of these conditions, the impact cannot be reduced to less than significant levels; (3) such mitigation measures would be implemented on property under ACTA jurisdiction but are not ACTA's responsibility to implement; and (4) no feasible measures were identified that would mitigate this significant adverse impact to insignificance.

Explanation: Dispersion modeling was performed to estimate the local offsite ambient pollutant concentrations resulting from emissions during construction. The analysis used the Environmental Protection Agency (EPA) Air Quality Dispersion Modeling (AERMOD) program (EPA, 2015). The most recent version of AERMOD (v. 15181) available during document preparation was used at the time the dispersion modeling analysis was conducted. AERMOD is a steady-state plume model that incorporates air dispersion based on planetary boundary layer turbulence structure and scaling concepts, including treatment of ground-level and elevated sources, and in simple and complex terrain. Because the Pier B Rail Yard would continue to operate during the construction period, the modeling analysis included both maximum construction and operational emissions during the construction period. Appendix A2 of the Draft EIR contains documentation of the Proposed Project construction emissions dispersion modeling analysis. Tables 3.2-11 and 3.2-12 of the Draft EIR present the maximum offsite pollutant concentrations associated with construction and operation of the Proposed Project during construction Phases 1 and 2, before mitigation is applied. Similarly, Tables 3.2-13 and 3.2-14 of the Draft EIR present the maximum offsite pollutant concentrations associated with concurrent construction and operation of the Proposed Project during construction Phase 3. With application of mitigation measures AQ-1 through AQ-5, 1-hour and annual NO2 concentrations would remain significant and unavoidable during all three construction phases. Furthermore, Proposed Project construction activities would make a cumulatively considerable and unavoidable contribution to a significant cumulative impact for NO2, PM10, and PM2.5

concentrations. Because the area surrounding the Proposed Project site is predominantly minority and low-income, Impact AQ-2 would constitute a disproportionately high and adverse effect on minority and low-income populations.

Impact AQ-3: Operation of the Proposed Project would produce air pollutants that exceed an SCQAMD significance threshold.

Finding: ACTA finds that (1) the operation of the Proposed Project would generate significant and unavoidable emissions of CO and NO_x; (2) mitigation measures were incorporated into the Proposed Project that serve to reduce this impacts, but even with the inclusion of these conditions, the impact cannot be reduced to less than significant levels; (3) such mitigation measures would be implemented on property under ACTA jurisdiction but are not ACTA's responsibility to implement; and, (4) no feasible measures were identified that would mitigate this significant adverse impact to insignificance.

Explanation: There are no additional feasible mitigation measures identified for the Proposed Project operation at present; however, to keep pace with emerging emission reduction technologies, a mandatory 5-year technology review would be made part of the Proposed Project as a Special Condition (Section 6.3.2). For each analysis year (2020, 2025, and 2035), the incremental emissions from operation of the Proposed Project relative to the CEQA baseline were compared to the SCAQMD daily emission thresholds to determine significance Table 3.2-19 of the Draft EIR shows that, without mitigation, operation of the Proposed Project would produce peak daily emissions that exceed the SCAQMD thresholds for CO in 2025 and 2035 and for NO_x in all analysis years. Line haul locomotive exhaust would be the primary contributor to these emissions. Therefore, these CO and NO_x emissions would represent a significant regional air quality impact. Proposed Project operational emissions would be below the thresholds for CO in 2020, and VOC, PM₁₀, and PM_{2.5} would be less than the CEQA baseline primarily because of fleet turnover. Accordingly, the impacts of operational emissions would be less than significant for VOC, PM₁₀, PM_{2.5}, and in all years and for CO in 2020, and mitigation measures for those impacts would not be required. The Proposed Project already incorporates many regulations and Clean Air Action Plan (CAAP) measures that reduce air pollutant emissions, as discussed in Section 3.2.2 of the Draft EIR. There are no additional feasible mitigation measures identified for Proposed Project operations at present. Additionally, the area surrounding the Proposed Project site is predominantly minority and low income, Impact AQ-3 would constitute a disproportionately high and adverse effect on minority and low-income populations.

Impact AQ-4: Operation of the Proposed Project would produce offsite air pollutants that exceed an SCQAMD significance threshold.

Finding: ACTA finds that (1) the operation of the Proposed Project would generate significant and unavoidable offsite ambient 1-hour and annual NO₂ concentrations; (2) mitigation measures were incorporated into the Proposed Project that serve to reduce this impacts, but even with the inclusion of these conditions, the impact cannot be reduced to less than significant levels; (3) such mitigation measures would be implemented on property under ACTA jurisdiction but are not ACTA's responsibility to implement; and (4) no feasible measures were identified that would mitigate this significant adverse impact to insignificance.

Explanation: The Proposed Project operation would make a cumulatively considerable and unavoidable contribution to a significant cumulative impact for NO₂, PM₁₀, and PM_{2.5} concentrations. A dispersion modeling analysis using the EPA AERMOD program was performed to estimate the local offsite ambient

pollutant concentrations resulting from the Proposed Project's operational emissions in the analysis years 2020, 2025, and 2035. Tables 3.2-21 and 3.2-22 of the Draft EIR show that, during operation of the Proposed Project, the maximum offsite 1 hour (federal) and the annual NO₂ concentrations would exceed the significance thresholds. Additionally, the area surrounding the Proposed Project site is predominantly minority and low income, Impact AQ-4 would constitute a disproportionately high and adverse effect on minority and low-income populations. Therefore, with no feasible mitigation available, the Proposed Project would result in significant impacts related to local 1-hour (federal) and annual NO₂ concentrations. All other operational air pollutant impacts would be less than significant.

Cumulative Air Quality Impacts: Construction of the Proposed Project, when considered in conjunction with related past, present and reasonably foreseeable future projects, would result in cumulatively considerable and unavoidable contribution to significant cumulative impacts to air quality.

Finding: ACTA finds that (1) Construction of the Proposed Project and cumulative projects together would: exceed emission thresholds for VOC, CO, NO_x, PM₁₀, PM_{2.5}, and possibly SO_x; would contribute to offsite ambient pollutant concentrations for NO_x, PM₁₀, PM_{2.5}; and would result in significant cumulative health risk impacts for individual cancer risk, population cancer burden, and non-cancer effects from acute exposure; (2) mitigation measures were incorporated into the Proposed Project that serve to reduce this impacts, but even with the inclusion of these conditions, the impact cannot be reduced to less than significant levels; (3) such mitigation measures would be implemented on property under ACTA jurisdiction but are not ACTA's responsibility to implement; and (4) no feasible measures were identified that would mitigate this significant adverse impact to insignificance.

Explanation: The construction of the Proposed Project, on its own and cumulatively with other projects, would together exceed the emission thresholds for VOC, CO, NO_x, PM₁₀, PM_{2.5}, and possibly SO_x and would result in significant cumulative air quality impacts during the Project construction period. Additionally, construction of the Proposed Project, on its own and cumulatively with other projects, would result in significant cumulative air quality impacts related to exceedances of the significance thresholds for offsite ambient pollutant concentrations of NO_x, PM₁₀, and PM_{2.5}. Construction of the Proposed Project, on its own and cumulatively with other projects, would result in significant cumulative air quality and health risk impacts for individual cancer risk, population cancer burden, and non-cancer effects from acute exposure. Construction emissions would also have a disproportionately high impact to predominately minority and low-income population surrounding the Proposed Project site. No specific CEQA significance criteria exists for the potential disproportionate and unavoidable impacts to low-income and minority populations. However, based on the results of the Proposed Project-specific and cumulative analyses, the Proposed Project would affect minority or low-income populations near the Project site.

Cumulative Air Quality Impacts: Operation of the Proposed Project, when considered in conjunction with related past, present and reasonably foreseeable future projects, would result in cumulatively considerable and unavoidable contribution to significant cumulative impacts to air quality.

Finding: ACTA finds that (1) Operation of the Proposed Project and cumulative projects together would: exceed operational emission thresholds for VOC, CO, NO_x, PM₁₀, PM_{2.5}, and SO_x; would contribute to offsite ambient pollutant concentrations for NO_x, PM₁₀, PM_{2.5}; and would result in significant cumulative health risk impacts for individual cancer risk, population cancer burden, and non-cancer effects from acute exposure; (2) mitigation measures were incorporated into the Proposed Project that serve to reduce this impacts, but even with the inclusion of these conditions, the impact cannot be reduced to less than significant levels; (3) such mitigation measures would be implemented on property

under ACTA jurisdiction but are not ACTA’s responsibility to implement; and (4) no feasible measures were identified that would mitigate this significant adverse impact to insignificance.

Explanation: The operation of the Proposed Project, on its own and cumulatively with other projects, would together exceed the emission thresholds for VOC, CO, NOx, PM10, PM2.5, and possibly SOx and would result in significant cumulative air quality impacts. However, the cumulatively considerable contribution would be temporary for VOC, PM10, PM2.5 because Proposed Project emissions would become less than the baseline emissions by 2035. The POLB would implement Mitigation Measure AQ-6, which would mitigate cumulative air quality impacts associated with operation of the Proposed Project by implementing and funding the POLB Community Grants Program. However, this mitigation measure is not applicable to the POLA, and the Proposed Project’s contribution to the operational emissions cumulative impact would remain cumulatively considerable and unavoidable. Operation of the Proposed Project, on its own and cumulatively with other projects, would result in significant cumulative air quality impacts related to exceedances of the significance thresholds for ambient concentrations of NOx, PM10, and PM2.5. Operation of the Proposed Project, on its own and cumulatively with other projects, would result in significant cumulative air quality and health risk impacts due to the disproportionately high impact to predominately minority and low-income population surrounding the Proposed Project site. No specific CEQA significance criteria exist for the potential disproportionate and unavoidable impacts to low-income and minority populations. However, based on the results of the Proposed Project-specific and cumulative analyses, the Proposed Project would affect minority or low-income populations near the Project site.

Special Conditions of Approval

The Pier B EIR concludes that construction in accordance with the City of Long Beach (COLB) Building Code requirements would limit the severity of consequences from severe seismically induced ground movement, including ground shaking, liquefaction, differential settlement, or other seismically induced ground failure. However, ACTA maintains specific engineering standards for improvements within the Alameda Corridor. As such, the following condition is included:

- 1) All engineering and construction plans for proposed Project elements under ACTA jurisdiction will abide by ACTA’s engineering standards. All plans will be submitted to ACTA for review and approval prior to construction.

Findings Conclusion

ACTA finds that no additional feasible mitigation measures or alternatives to the Proposed Project, other than those included in the FEIR, have been identified that can further mitigate the potentially significant adverse project impacts on air quality while meeting the basic objectives of the Proposed Project.

ACTA further finds that all findings presented here are supported by substantial evidence as analyzed in the FEIR and in the administrative record as a whole.

Lastly, ACTA finds that there have been (1) no substantial changes to the Proposed Project which would require major revisions of the FEIR, (2) no substantial changes with respect to the circumstances under which the Proposed Project is being undertaken which would require major revisions in the FEIR, and (3) no new information has become available which was not known or could have been known at the time the FEIR was certified as complete.

Statement of Overriding Considerations

If significant adverse impacts of a Proposed Project remain after incorporating feasible mitigation measures, or no feasible measures to mitigate the adverse impacts are identified, an approving agency must make a determination that the benefits of the Proposed Project outweigh the unavoidable, significant, adverse environmental effects if it is to approve the Proposed Project. In accordance with Public Resources Code Section 21081 and Title 14 California Code of Regulations Section 15093, ACTA, in determining whether or not to approve the Proposed Project, balanced the economic, social, technological, and other Proposed project benefits against its unavoidable environmental risks, and finds that each of the benefits of the Proposed project set forth below outweigh the significant adverse environmental effects that are not mitigated to less than significant levels. This statement of overriding considerations is based on ACTA's review of the FEIR and the administrative record as a whole. Each of the benefits identified below provides a separate and independent basis for overriding the significant environmental effects of the Proposed Project. Accordingly, this Statement of Overriding Considerations regarding potentially significant adverse environmental impacts resulting from the Proposed Project, as set forth below, has been prepared. Pursuant to CEQA Guidelines Section 15093(c), this Statement of Overriding Considerations will be included in the record of the Proposed Project approval and will also be noted in the Notice of Determination.

Having reduced the potential effects of the Proposed project through all feasible mitigation measures as described previously in this statement and balancing the benefits of the Proposed Project against its potential unavoidable adverse impact on hazards involving the release of hazardous materials into the environment during operation, the Harbor Department finds that the following legal requirements and benefits of the Proposed Project individually and collectively outweigh the potentially significant unavoidable adverse impacts for the following reasons:

1. The Proposed Project supports ACTA's stated mission of facilitating safe and efficient movement of goods and seeking health and safety benefits in air quality, traffic and aesthetics for Corridor communities and Southern California region, while maintaining a partnership with the ports and railroads. The Proposed Project. A fundamental purpose of the Proposed Project is to facilitate the transport of a larger proportion of containerized cargo directly to and from the San Pedro Bay Ports Complex via rail instead of by drayage trucks, which would positively impact air quality and traffic for Corridor communities as well as the Southern California region as a whole.
2. The Proposed Project supports the California Sustainable Freight Action Plan. Pursuant to Executive Order B-32-15, the Sustainable Freight Action Plan established measures of progress to improve freight efficiency, transition to zero-emissions technologies, and make California's freight system more competitive. Certain elements of the Proposed Project serve to forward State goals by providing infrastructure for more efficient cargo transport. The 2016 Sustainable Freight Action Plan identifies the expansion of on-dock rail as one of many key improvements for freight facility modernization in the San Pedro Bay Ports. These improvements will increase capacity and throughput of terminals (reducing congestion and wait times), reducing truck trips, and improving air quality near the ports.

In balancing the benefits of the overall Proposed Project described above with the Proposed Project's unavoidable and significant adverse environmental impacts, ACTA finds that the Proposed Project's benefits individually and collectively outweigh the unavoidable adverse impact, such that this impact is acceptable. ACTA further finds that substantial evidence presented in the FEIR and the administrative

record as a whole supports approving the Proposed Project despite the Proposed Project's potential adverse impact.

RECORD OF PROCEEDINGS

The record of ACTA’s approval for the Proposed Pier B On-Dock Rail Support Facility Project, including these Findings of Fact and Statement of Overriding Considerations, and the Notice of Determination (to be sent to the Los Angeles County Clerk and State Clearinghouse to be posted and recorded) will be available to the general public at the ACTA Current Projects website, <https://www.acta.org/about/projects/current-projects/>.

The record of the Port of Long Beach’s Proposed Project approval is available to the general public for review at <https://polb.com/documents#ceqa-nepa>.

ACTA Pier B EIR Mitigation Monitoring and Reporting Program

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
Air Quality			
MM-AQ-1: On-Road Construction Trucks. All on-road heavy-duty trucks with a fifth-wheel tractor/trailer and a gross vehicle weight rating (GVWR) of 19,500 pounds or more transporting materials to and from the construction site shall meet EPA 2010 on-road heavy-duty diesel engine emission standards.	Daily during all construction activities.	POLB	
MM-AQ-2: Tier 4 Construction Equipment. All self-propelled, diesel-fueled off-road construction equipment 25 horsepower (hp) or greater shall meet EPA/CARB Tier 4 off-road engine emission standards.	During all construction activities.	POLB	
MM-AQ-3: Off-Road Construction Equipment. Off-road diesel-powered construction equipment shall comply with the following: <ul style="list-style-type: none"> – Maintain all construction equipment according to manufacturer’s specifications. – Construction equipment shall not idle for more than 5 minutes when not in use. – High-pressure fuel injectors shall be installed on construction equipment vehicles. <p>The benefits to be achieved by the above-listed components of this measure were not quantified in the analysis due to the wide range of variables involved. This measure is applied, however, to further reduce combustion emissions</p>	Daily during all construction activities.	POLB	
MM-AQ-4: Increased Watering Frequency for Fugitive Dust Control. Construction site watering, which would be required by SCAQMD Rule 403, shall be increased such that the watering interval is no greater than 2.1 hours. This measure would increase the fugitive dust emissions control from 61 to 74 percent (Western Governors’ Association, 2006).	During all construction activities involving groundwork (i.e., moving dirt).	POLB	
MM-AQ-5: Additional Fugitive Dust Control. Contractors shall:	During all construction activities.	POLB	

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<ul style="list-style-type: none"> – Apply approved nontoxic chemical soil stabilizers according to manufacturers’ specifications to all inactive construction areas or replace groundcover in disturbed areas. – Provide temporary wind fencing around sites being graded or cleared. – Cover truck loads that haul dirt, sand, or gravel or maintain at least 2 feet of freeboard in accordance with Section 23114 of the California Vehicle Code. – Install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site. – Install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site. – Suspend all soil disturbance activities when winds exceed 25 miles per hour (mph) or when visible dust plumes emanate from the site and stabilize all disturbed areas. <p>The benefits to be achieved by the above-listed components of this measure were not quantified in the analysis due to the wide range of variables involved. This measure is applied, however, to further reduce fugitive dust emissions.</p>			
Biological Resources			
<p>MM-BIO-1: MM-BIO-1 (Bats): A qualified bat specialist shall conduct a pre-construction survey. If bats are found or determined to be potentially present, construction activity would be stopped if determined to be disruptive to breeding or roosting, and appropriate subsequent actions would be identified and implemented.</p>	<p>Prior to, and during (if warranted), construction work on or beneath the Dominguez Channel rail bridge.</p>	<p>POLB</p>	
Cultural Resources			
<p>MM-CUL-1: Paleontological Monitoring. Because of the Project area’s potential for containing buried paleontological resources including fossilized remains of Pleistocene land mammals beginning at depths of 5 feet below the surface, a paleontological monitoring program should be implemented during earthmoving with excavation at 5 feet or more below ground surface in</p>	<p>During any excavation at or below 5 feet of depth or where fossiliferous or older alluvium material is encountered.</p>	<p>POLB</p>	

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>areas underlain by younger alluvium, or where such activities encounter younger alluvium below any artificial fill.</p>			
<p>MM-CUL-2: Inadvertent Discovery of Paleontological Resources. In the event that construction activities encounter potentially fossiliferous materials, work in the immediate vicinity will be temporarily halted until a qualified vertebrate paleontologist can evaluate the discovery and implement appropriate treatment measures</p>	<p>During all earthwork activities and when potentially fossiliferous material is unearthed.</p>	<p>POLB</p>	
<p>Global Climate Change</p>			
<p>MM-GCC-1: LEED. New buildings constructed as part of the proposed Project shall pursue Leadership in Energy and Environmental Design (LEED) if they meet the criteria requirements for certification (including building size). COLB exempts buildings of less than 7,500 square feet of occupied space from its Green Building Policy. LEED certification is made at one of the following four levels, in ascending order of environmental sustainability: certified, silver, gold, and platinum. The certification level points are given for various design features that address the following areas (U.S. Green Building Council, 2009):</p> <ul style="list-style-type: none"> • Sustainable sites; • Water efficiency; • Energy and atmosphere; • Materials and resources; • Indoor environmental quality; and • Innovation and design process. <p>As a result, a LEED-certified building would be more energy efficient, thereby reducing GHG missions compared to a conventional building design. The effects of this measure are not quantified in this analysis.</p>	<p>During Final Design of New Buildings 7,500 square feet or more in size.</p>	<p>POLB</p>	
<p>MM-GCC-2: Recycling of Construction Materials. Pursuant to the POLB Sustainable Business Practices Administrative Directive, construction debris must be recycled, reused or otherwise diverted from landfills to the maximum extent possible. Recyclable construction waste generated by the Project shall be taken to an accredited recycling center.</p>	<p>During demolition and construction activities.</p>	<p>POLB</p>	
<p>MM-GCC-3: Recycling and Sustainable Business Practices. During operation, the Port shall follow recycling objectives and measures established by the</p>	<p>During Operation of the Pier B Rail Yard.</p>	<p>POLB</p>	

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>Port’s Administrative Directive for Sustainable Business Practices (POLB, 2006). In general, products made with recycled materials require less energy and raw materials to produce than products made with unrecycled or raw materials. This mitigation measure also includes energy conservation practices, purchasing of “Green” products, energy-efficient lighting, low-volatile organic compounds (VOC) paint and finishes, and use of recycled or remanufactured carpeting and office furnishings. This directive also includes minimizing the use of paper and plastic, reusing materials and equipment, and proper disposal of alkaline batteries. This savings in energy and raw material use translates into GHG emission reductions. The effectiveness of this mitigation measure was not quantified due to the lack of a standard emission estimation approach.</p>			
<p>MM-GCC-4: Xeriscaping. Water conservation features, including drought-tolerant plant materials, are required for all projects undertaken in the Port. Xeriscape landscaping shall incorporate the use of water conservation features including, but not limited to, drought-tolerant plants; hardscape; permeable material such as concrete, asphalt, and pavers; recycled material such as concrete, gravel, granite, and shredded redwood; and drip irrigation systems and timers.</p>	<p>During Project Design (prior to acceptance of Final Design).</p>	<p>POLB</p>	
<p>MM-GCC-5: Tree Planting. The Port shall plant shade trees around the main office and maintenance buildings in accordance with species identified in the Green Port Long Beach Sustainable Landscape Palette (POLB, 2016c) and POLB Sustainable Development Guidelines (POLB, 2015c). Trees act as insulators from weather, thereby decreasing energy requirements. Onsite trees also provide carbon storage. Although not quantified, implementation of this measure is expected to reduce the Project’s GHG emissions by less than 0.1 percent.</p>	<p>During Project Design (prior to acceptance of Final Design) and During Construction.</p>	<p>POLB</p>	
<p>MM- GCC-6: Tree Planting – Transportation Corridors. The Port shall plant new shade trees on Port-controlled lands adjacent to the roads that lead into the facility, to the extent practicable, consistent with safety and other land use considerations. The effectiveness of this mitigation measure was not quantified due to the lack of a standard emission estimation approach.</p>	<p>During Project Design (prior to acceptance of Final Design) and During Construction.</p>	<p>POLB</p>	
<p>MM-GCC-7: Employee Carpooling. The construction contractor and the Port shall encourage construction and facility employees to carpool or to use public transportation. These employers shall provide incentives to promote</p>	<p>During Project construction and operations.</p>	<p>POLB</p>	

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>the measure, such as preferential parking for carpoolers or vanpool subsidies, and they shall provide information to employees regarding the benefits of alternative transportation methods. The effectiveness of this mitigation measure was not quantified due to the lack of a standard emission estimation approach.</p> <p>The Port Is in the process of developing the GHG Strategic Plan. This plan will outline the overall approach for mitigating potential Project-specific and/or cumulative GHG impacts of projects through the modernization and/or upgrading of marine terminals and other facilities in the Long Beach Harbor District.</p>			
<p>MM-GCC-8: Community Grants Program. The Port will mitigate GHG impacts of the proposed Project by implementing and funding the CGP to partially address the cumulative GHG impacts of the proposed Project. The Port shall provide \$1.4 million, as determined by the methodology described below.</p> <p>The timing of the payment determined by the methodology shall be made by the later of the following two dates: (a) the date that the Port issues a Notice to Proceed (NTP) or otherwise authorizes commencement of construction on the Pier B On-Dock Rail Support Facility Construction Contract; or (b) the date that the Pier B On-Dock Rail Support Facility Final EIR is conclusively determined to be valid, either by operation of Public Resources Code (PRC) Section 21167.2 or by final judgment or final adjudication.</p>	<p>Within 30 days after Project Opening.</p>	<p>POLB</p>	
<p>MM-GCC-9: Indirect GHG Emission Avoidance and Mitigation. The Port shall minimize indirect GHG emissions through measures that reduce or avoid electricity consumption at the facility. Such measures may include, but are not limited to, the use of low-energy demand lightings (e.g., fluorescent or light-emitting diode [LED]), and use of energy-efficient floodlights.</p> <p>To identify future opportunities to reduce indirect GHG emissions, the Port shall conduct a third-party energy audit every 5 years and install innovative power-saving technologies where feasible, such as power factor correction systems and lighting power regulators. Such systems help to maximize usable electric current and eliminate wasted electricity, thereby lowering overall electricity use.</p>	<p>During facility engineering and design and prior to acceptance of final design drawings. In addition, an energy audit would be conducted 5 years after operation initiates at new facilities.</p>	<p>POLB</p>	

ACTA Board Meeting
Monday, August 15, 2024

Pier B On-Dock Rail Support Facility Program



Agenda

1. Program Goals
2. Program Benefits
3. Program Overview
4. Phasing / Projects Overview
5. MOA for Locomotive Facility



Serve longer trains more efficiently

Promote a mode shift to rail

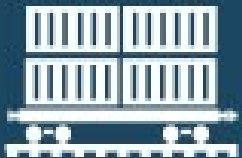
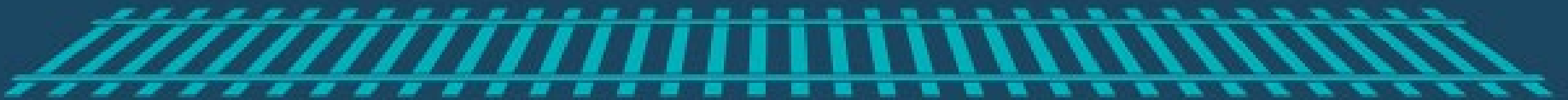
Program Benefits



IMPROVED
COMPETITIVENESS



MODE SHIFT FROM
TRUCK TO RAIL



IMPROVED FREIGHT
SUSTAINABILITY



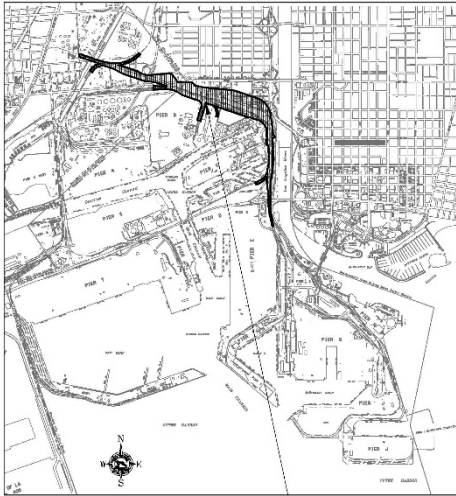
REVENUE, JOB AND
ECONOMIC GROWTH



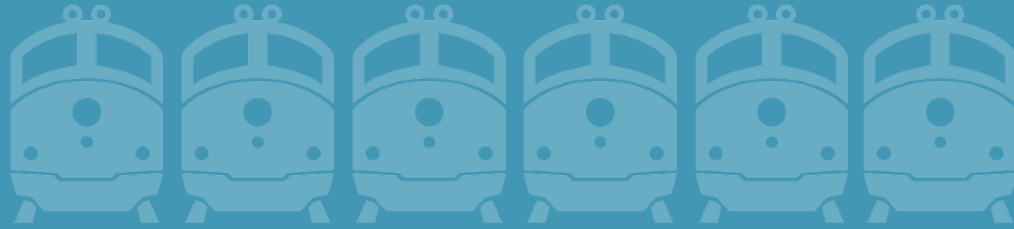
LOWER
EMISSIONS

3 Program Overview

PIER B ON-DOCK RAIL SUPPORT FACILITY PROGRAM



PROJECT LOCATION



Program Overview

3

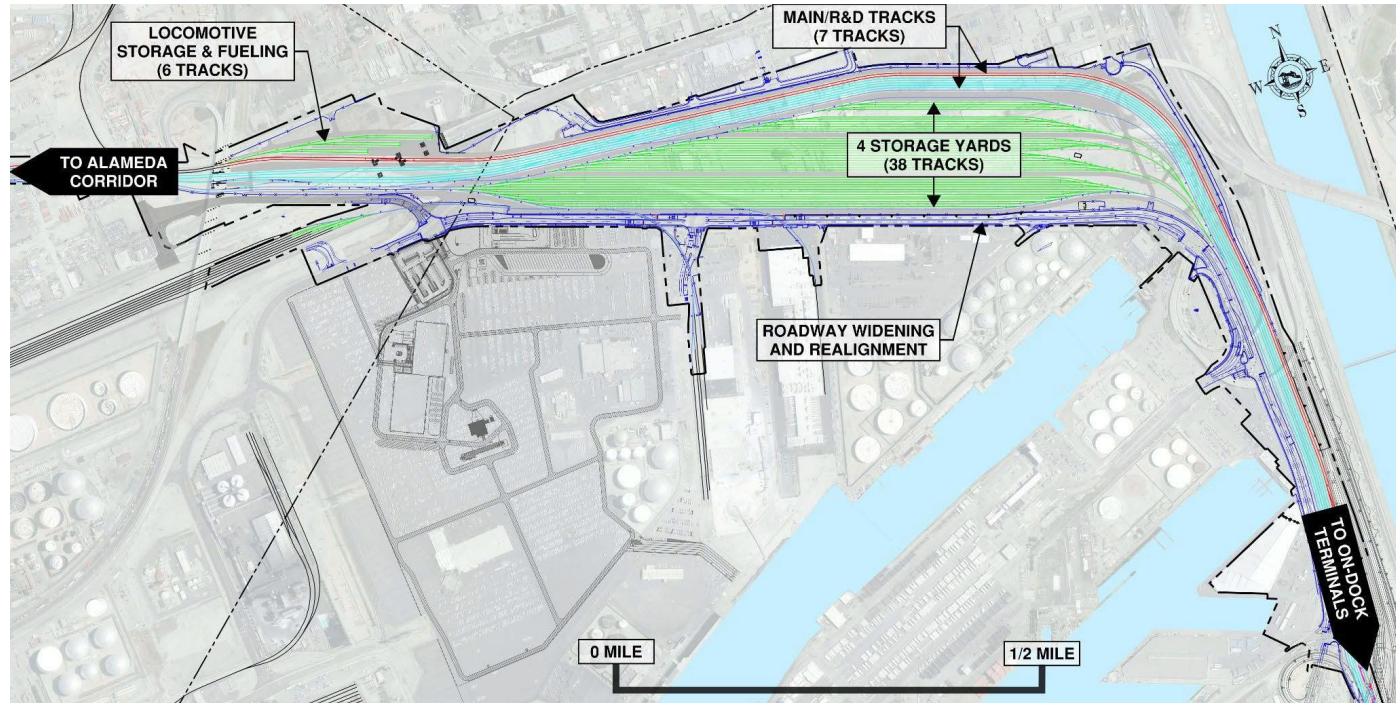


Program Overview

3

Key Features of the Program Ultimate Build

- » 7 main, receiving, and departure tracks up to 10,000 feet long
- » 4 storage yards comprised of 38 tracks totaling 93,000 track-feet
- » Locomotive storage and fueling facility for up to 30 locomotives
- » Roadway widening and realignments (Pier B St, Edison Ave, Pico Ave, Pier C St, Anaheim Wy)



\$1.6B Estimated Program Cost
2032 Completion Target

AMERICA'S GREEN GATEWAY

Pier B Rail Program Buildout



Prepared for
Office of the Secretary of Transportation
US Department of Transportation
National Infrastructure Project Assistance
Grants Program (Mega)

Submitted by
Port of Long Beach
415 W. Ocean Boulevard
Long Beach, CA 90802

MAY 23, 2022



GRANT AWARD

Amount

LA Metro Call for Projects, CMAQ / RSTP	\$16.3M
LA Metro Measure R	\$10.0M
MARAD 2021 Port Infrastructure Development	\$52.3M
CTC Trade Corridor Enhancement Program	\$70.4M
Cal STA Port & Freight Infrastructure Program	\$158.4M
MARAD 2023 Port Infrastructure Development	\$52.6M
US DOT MEGA Grant Program	\$283.0M

TOTAL

\$643.0M

Program Overview

Why is the Pier B Rail Yard Needed?

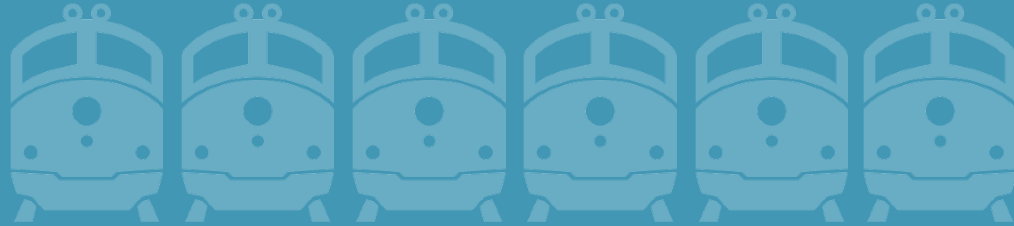
- » Greater industry demand for on-dock rail and increases in containerized cargo
 - About 22% currently is on-dock rail
 - POLB has goal to move 35% via on-dock
- » Pier B On-Dock Rail Support Facility Program
 - Increasing on-dock capacity with rail support facilities
 - Connect with two Class I rail networks
- » On-Dock Rail provides benefits for POLB and its stakeholders:
 - Maintain competitiveness with lower shipping costs
 - Environmental excellence
 - Reduction in trucks and roadway congestion
 - Railroad and Supply Chain System Flexibility

“...The new Pier B rail facility will increase velocity of on-dock rail operations throughout our Port, as well as the entire complex...”

\$1.567B
ESTIMATE AT COMPLETION

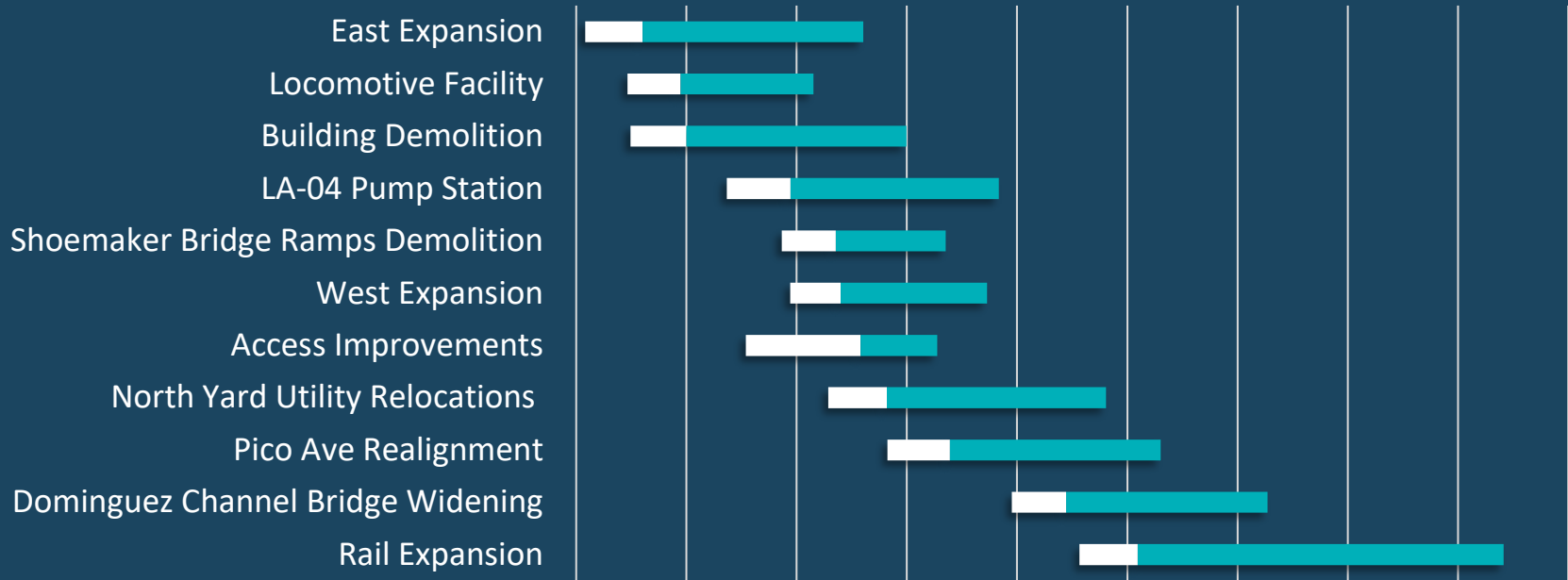
CONSTRUCTION COST EST
SCOPE ENHANCEMEN
RIGHT-OF-WAY COST INC
COMPREHENSIVE
CONSTRUCTION SEQUE
CONTINGENCY
UNPRECEDENTED TI
\$99M FORECASTED EXPENDITURES THRU F

4 Phasing / Projects Overview



CONSTRUCTION SCHEDULE

Jan-24 Jan-25 Jan-26 Jan-27 Jan-28 Jan-29 Jan-30 Jan-31 Jan-32 Jan-33




Bid ■ Bid Duration ■ Construction Duration

M E M O

Alameda Corridor Transportation Authority

To: Governing Board

Meeting Date: August 15, 2024

From: Michael C. Leue, Chief Executive Officer 

Subject: APPROVE Memorandum of Agreement for Port of Long Beach Pier B On-Dock Rail Support Facility Locomotive Facility Turnout and Crossover Connecting to the Alameda Corridor 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

Recommendation:

Staff recommends that the Governing Board approve the proposed Memorandum of Agreement (MOA) 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 (Project); and authorize ACTA's CEO to execute and the Governing Board Secretary to attest to the MOA, attached as Transmittal 2, on behalf of the Governing Board.

Background:

Reference is made to that certain Amended and Restated Alameda Corridor Use and Operating Agreement (Use Agreement), dated December 15, 2016, by and among the BNSF Railway Company (BNSF), Union Pacific Railroad Company (UP), the City of Los Angeles, acting by and through its Board of Harbor Commissioners (POLA), the City of Long Beach, acting by and through its Board of Harbor Commissioners (POLB), and the Alameda Corridor Transportation Authority (ACTA), which governs the use and operations of the Alameda Corridor. The Project falls within the scope of jurisdiction of the Use Agreement, and with the MOA establishing the terms and conditions for the design and construction of the Project, the MOA needs to be approved by the five parties to the Use Agreement.

The POLB Board of Harbor Commissioners approved the MOA at its meeting on July 8, 2024. The Los Angeles Board of Harbor Commissioners approved the MOA at its meeting on June 27, 2024. Both UP and BNSF have approved the MOA.

Discussion:

The POLB Pier B On-dock Rail Support Facility (Pier B Program) is a key component of the POLB's 10-Year Capital Plan. The Pier B Program will reconfigure and expand the existing rail yard to serve intermodal cargo, and enable cargo movements to shift from trucks to trains. The Project supports POLB's goal of moving 35% of all POLB cargo by on-dock rail which will reduce highway congestion and the carbon footprint of the supply chain.

The Project is an element of the Pier B Program as shown in Transmittal 1. The Project includes portions within ACTA jurisdiction and requires the execution of this MOA to perform work within this area. The proposed MOA is required to address the specific details of the proposed Pier B Locomotive Service Facility (Project), including but

not limited to the design, construction, operations, maintenance and repair of the Project. The MOA requires POLB to have sole responsibility for all costs associated with the Project.

The Pier B Locomotive Facility Project bidding is planned to bid and begin construction in 2024 with construction pending approval of the MOA and its requirements. The Project consists of a locomotive support facility with tracks to be used for staging, fueling and light maintenance of locomotives can be performed; paving around the tracks; perimeter fencing; and a lead track from the Mainline 2 to provide locomotive access.

The Project elements within ACTA's jurisdiction include a new turnout from ACTA Mainline 2 and a new crossover between ACTA Mainline 1 and Mainline 2, inclusion of railroad signal control to incorporate the new turnout into CP Perry and the new crossover into CP Gaspur, as well as shifting of mainline track alignment to accommodate those elements.

The ACTA Governing Board is requested to approve the MOA for Pier B Locomotive Facility as provided in Transmittal 2.

Budget Impact:

There is no direct impact on the ACTA Operating Budget since all costs will be either paid directly by Port of Long Beach or reimbursed by POLB to ACTA.

Co-General Counsel Review:

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

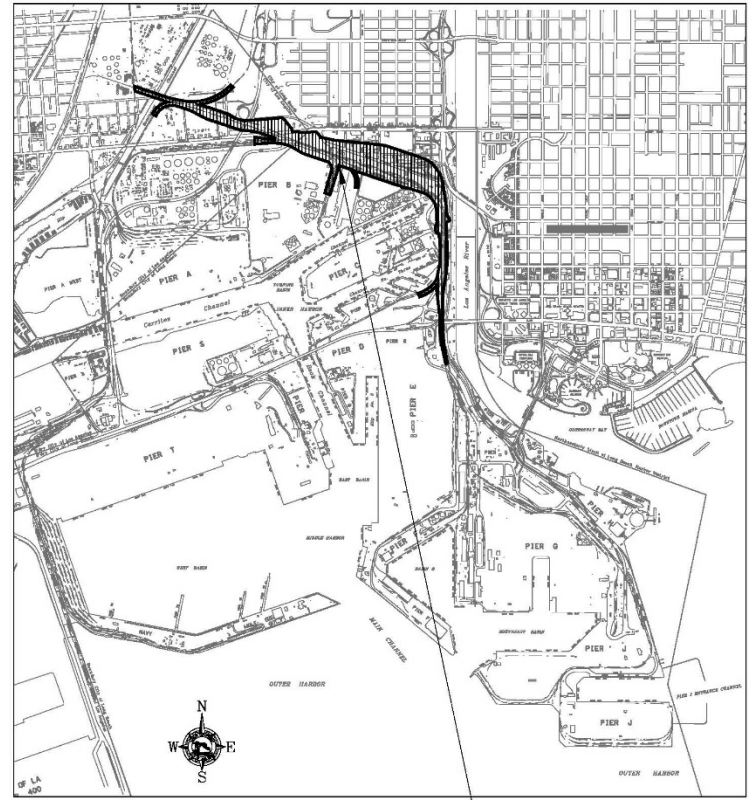
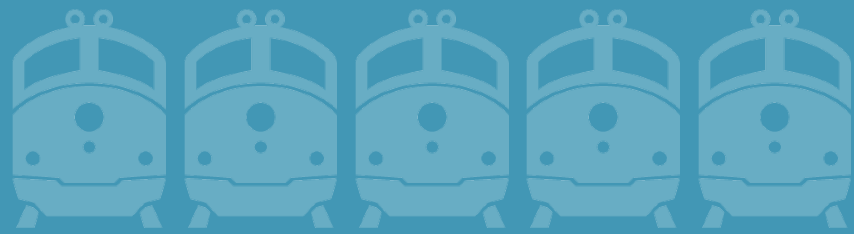
Transmittals:

Transmittal 1 – Pier B Program Location and Overview

Transmittal 2 – Memorandum of Agreement for Port of Long Beach Pier B On-Dock Rail Support Facility Locomotive Facility Turnout and Crossover Connecting to the Alameda Corridor

PIER B ON-DOCK RAIL SUPPORT FACILITY PROGRAM

Program Location



LOCATION

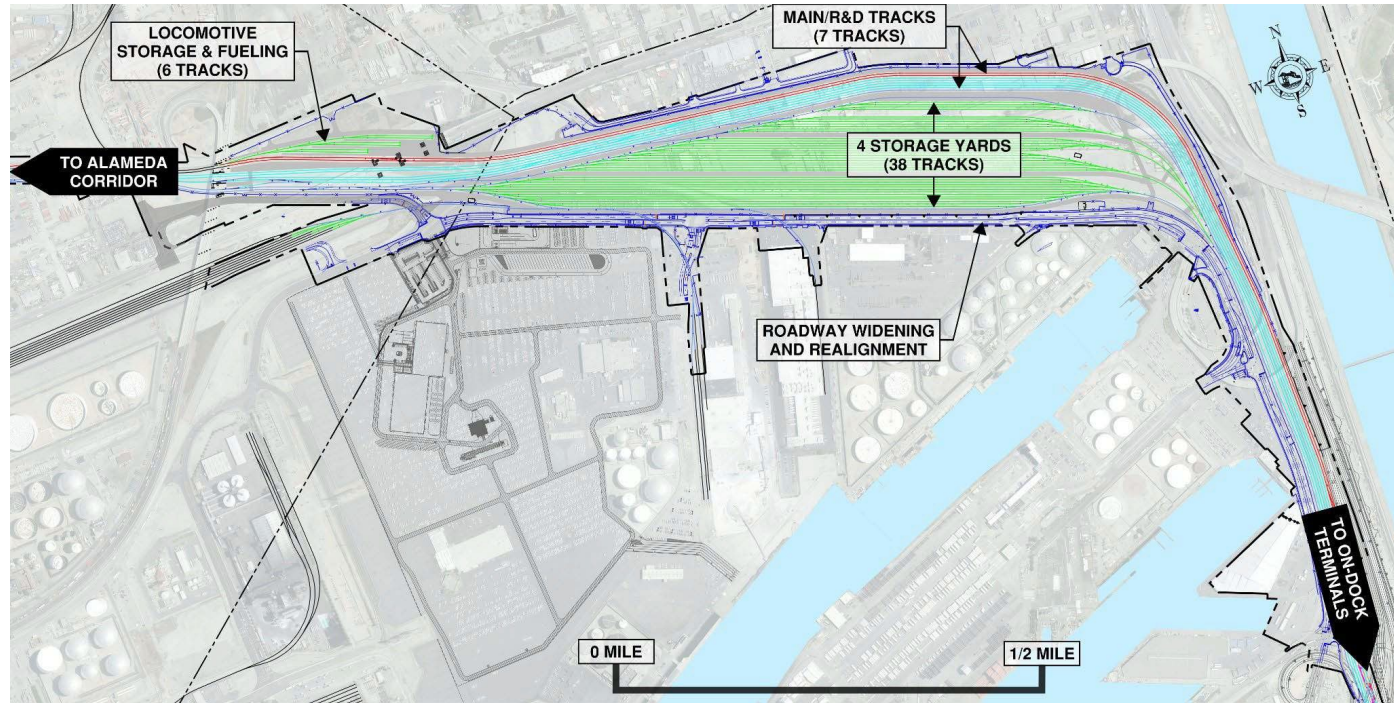
Program Overview



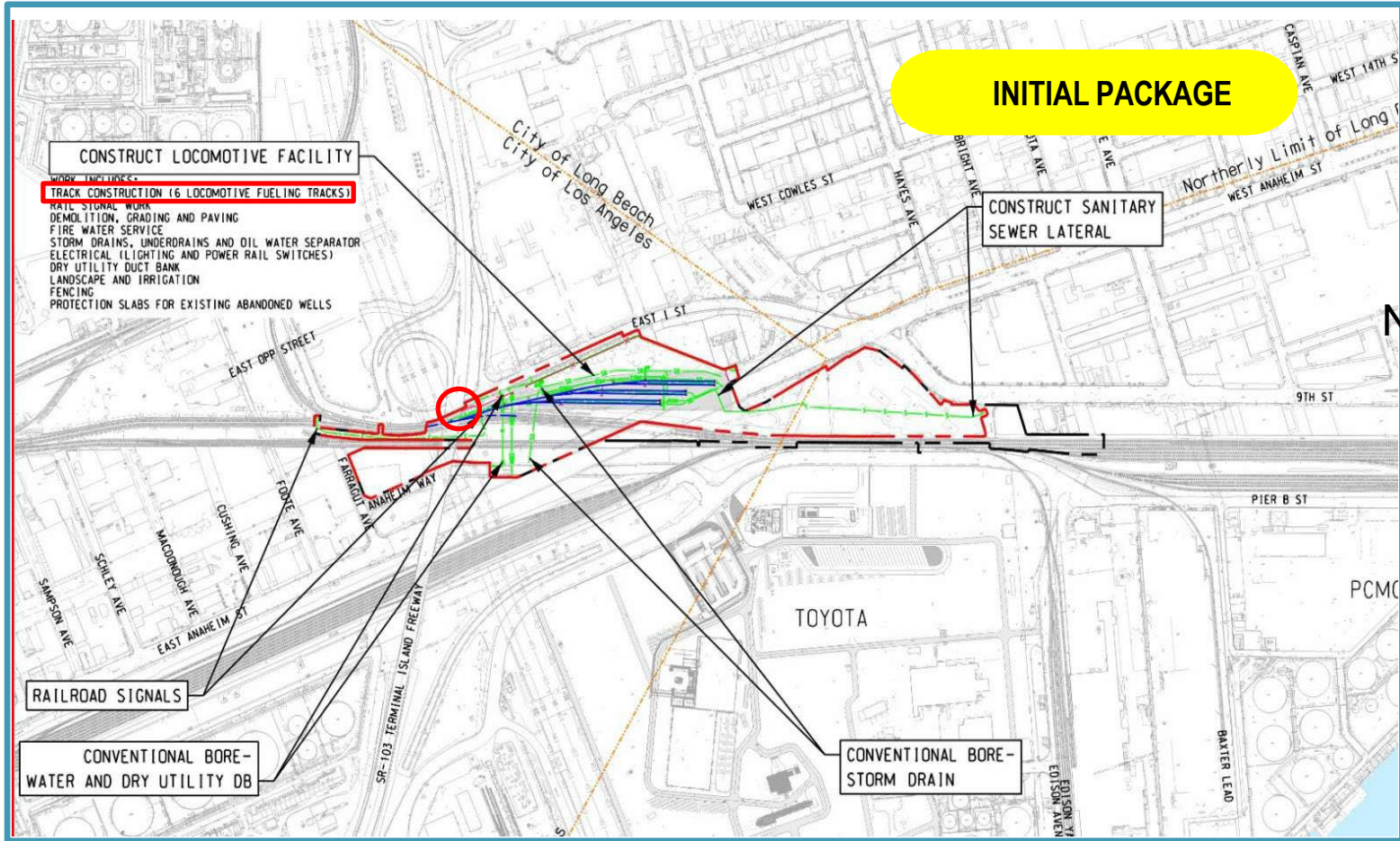
Program Overview

Key Features of the Program Ultimate Build

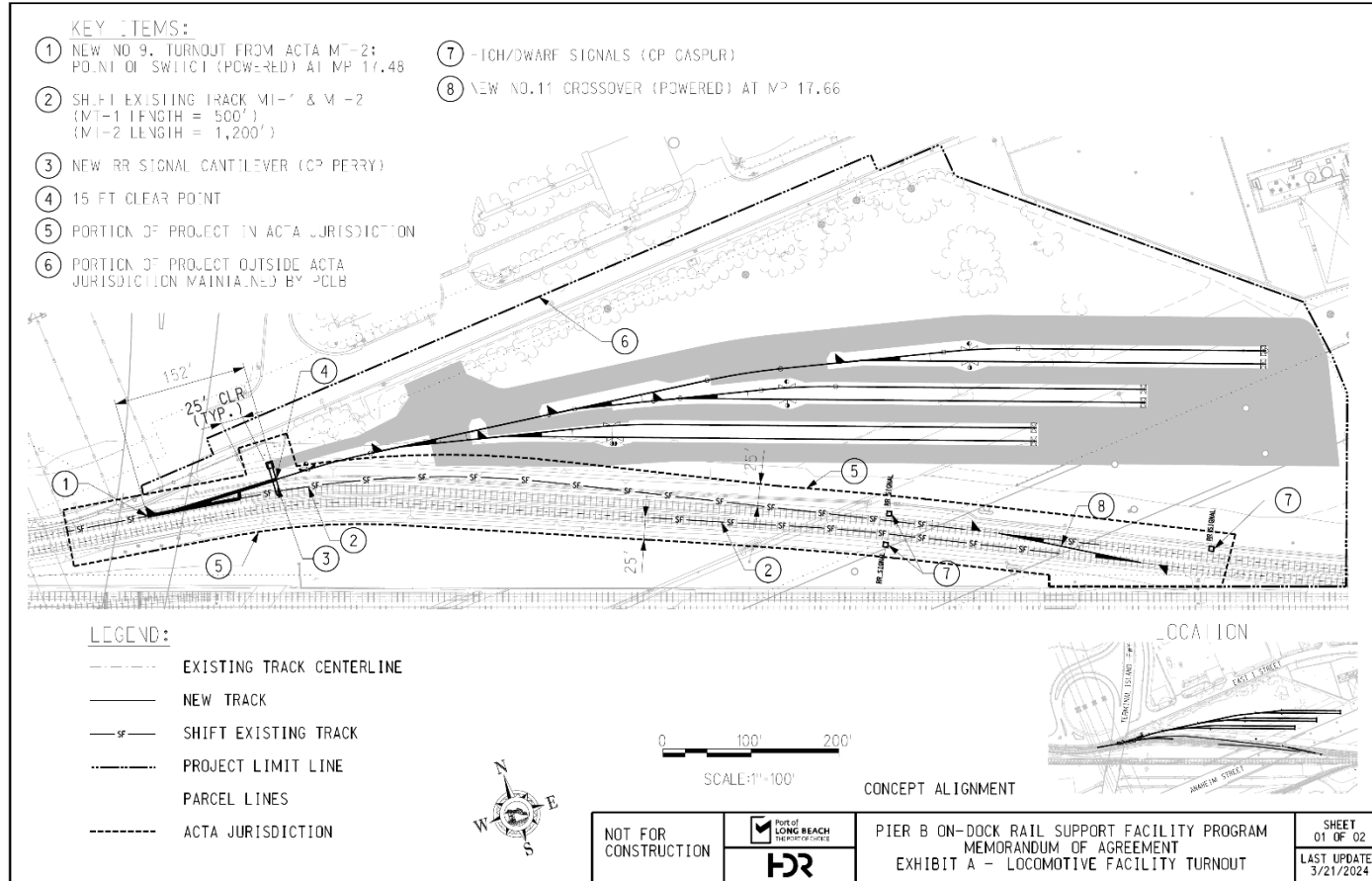
- » 7 main, receiving, and departure tracks up to 10,000 feet long
- » 4 storage yards comprised of 38 tracks totaling 93,000 track-feet
- » Locomotive storage and fueling facility for up to 30 locomotives
- » Roadway widening and realignments (Pier B St, Edison Ave, Pico Ave, Pier C St, Anaheim Wy)



Locomotive Facility Project



Locomotive Facility – MOA Scope



MEMORANDUM OF AGREEMENT

PORT OF LONG BEACH PIER B ON-DOCK RAIL SUPPORT FACILITY LOCOMOTIVE FACILITY TURNOUT AND CROSSOVER CONNECTING TO THE ALAMEDA CORRIDOR

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made and entered into by and between the **Alameda Corridor Transportation Authority** ("ACTA"), the **City of Los Angeles, acting by and through its Board of Harbor Commissioners** ("POLA"), the **City of Long Beach, acting by and through its Board of Harbor Commissioners** ("POLB" and, together with POLA, the "**Ports**"), the **BNSF Railway Company** ("BNSF") and **Union Pacific Railroad Company** ("UP" and, together with BNSF, the "**Railroads**"), with reference to the following Recitals:

RECITALS

WHEREAS, POLB desires to undertake construction of a segment of its Pier B On-Dock Rail Support Facility Program by constructing a locomotive storage and fueling facility as shown on Figure "A", attached hereto and incorporated herein by reference ("Locomotive Facility"). Said construction that occurs on ACTA jurisdiction is shown on Figures A and B, including a turnout from ACTA mainline (MT-2) at milepost (MP) 17.48 ("Turnout"); a new crossover between ACTA mainlines at Anaheim Street milepost (MP) 17.66; realignment of the existing mainlines to facilitate the new turnout and crossover; and new signal systems, including a cantilevered signal located at the 15ft Clear Point (collectively, the "Locomotive Facility Turnout and Crossover"). Portions of the Locomotive Facility located outside of ACTA jurisdiction are northeastward of the 15ft Clear Point to approximately 3400 East I Street, Wilmington, CA 90744;

WHEREAS, POLB desires to construct the Locomotive Facility Turnout and Crossover, which also consists of attendant facilities, including, but not limited to, electrical appurtenances and signal system modifications, to connect the Locomotive Facility to the Alameda Rail Corridor via a rail turnout located near Control Point Perry and East I Street in Wilmington, and crossover located between ACTA mainlines at Anaheim Street, which improvements are shown on Figures A and B attached hereto and incorporated herein by reference;

WHEREAS, the Locomotive Facility, as well as the related Turnout and Crossover, are intended, in part, and are expected, to improve operational efficiencies for the parties' operations, including the operation of rail traffic in the Alameda Corridor;

WHEREAS, ACTA, the Ports and the Railroads entered into an Amended and Restated Use and Operating Agreement, dated as of December 15, 2016 ("Use and Operating Agreement"), which sets forth the terms and conditions for the financing, use, operation, maintenance and repair of the Alameda Corridor;

WHEREAS, ACTA, the Ports and the Railroads desire to enter into this Agreement to establish the terms and conditions pursuant to which the Locomotive Facility Turnout and Crossover will be designed and constructed, and to agree that the Use and Operating Agreement shall apply to the Locomotive Facility and the Locomotive Facility Turnout and Crossover; and

WHEREAS, capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning set forth in the Use and Operating Agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Design and Construction of the Locomotive Facility Turnout and Crossover

(a) **Design.** POLB shall prepare or cause to be prepared a design plan (the “Design Plan”) for the Locomotive Facility Turnout and Crossover and any other components within the jurisdiction of the ACTA Use Permit. ACTA or its subcontractors shall provide a prompt compliance review of the Design Plan and ACTA’s Chief Executive Officer shall approve the start of construction, which approval will not be unreasonably withheld. POLA has design approval on property jointly owned with POLB via issuance of the required Harbor Engineers Permit (HEP). POLB shall prepare the Design Plan so that it complies with all applicable requirements set forth in the Use and Operating Agreement, including but not limited to Article 2.5, and generally consistent with the existing Track Schematic Drawings.

(b) **Construction.** POLB, at its sole cost and expense and in accordance with the Design Plan, shall cause its contractor(s) to (i) construct and install the Locomotive Facility Turnout and Crossover as shown in Figures A and B, and necessary attendant facilities, including, but not limited to, electrical appurtenances and signal system modifications, (ii) remove and/or realign a portion of the existing track on the Rail Corridor that is necessary to perform construction and installation of the Locomotive Facility Turnout and Crossover, and (iii) undertake any work related to such installation. During such construction and installation, POLB shall provide ACTA with periodic updates (but no less than monthly) with respect to any anticipated or proposed changes to the Design Plan, costs and expenses associated with the work. With respect to any work done on property jointly owned by POLA and POLB, POLB shall obtain a POLA Harbor Engineers Permit (HEP) prior to the start of construction on said property.

POLB shall notify ACTA at least ten (10) days prior to undertaking any work connected with the Locomotive Facility Turnout and Crossover that is adjacent (within 25 feet) to the Rail Corridor and to comply with all of ACTA’s safety procedures during the construction and installation of the Locomotive Facility Turnout and Crossover and signal system. At all times during the installation and construction process, ACTA and its representatives shall have access to the site and may monitor and inspect the progress of the work performed by POLB and/or its contractors. ACTA may require POLB to make corrections to any work which is noncompliant with the Design Plan, the Use and Operating Agreement and/or industry construction standards. All such work shall be performed in accordance with all applicable laws, regulations and orders.

POLB shall provide written notice to ACTA within ten (10) days following completion of the work in order for ACTA and/or its representatives to inspect the completed project prior to the commencement of operations.

POLB shall cause its contractor(s) to design and undertake all necessary modifications to the Rail Corridor's signal system in order to accommodate the Locomotive Facility Turnout and Crossover. The design of such modifications shall be included in the Design Plan and subject to the review and approval by ACTA and POLA prior to such modifications being made, which approval shall not be unreasonably withheld.

ACTA, the Ports, and the Railroads agree to cooperate in good faith in the scheduling and coordination of all work so that the construction of the Locomotive Facility Turnout and Crossover will progress as expeditiously as possible under the circumstances and with minimal, if any, interference with operations on the Rail Corridor.

(c) Cost. POLB shall be solely responsible for all costs and expenses directly associated with the permitting, design and construction of the Locomotive Facility Turnout and Crossover, including, without limitation, (i) removal and/or realignment of the existing track as provided in Section 1(b) and any other improvements and relocation or protection of any existing utilities or other third-party facilities, (ii) construction and installation of the Locomotive Facility Turnout and Crossover and Locomotive Facility, (iii) modifications to the Rail Corridor's signal system as provided in Section 1(b), (iv) review and approval of the Design Plan, and (v) coordination and oversight of the work as provided in this Agreement. For clarity, any costs and expenses incurred by or on behalf of ACTA in connection with the foregoing shall be reimbursed by POLB pursuant to a separate, written reimbursement agreement between POLB and ACTA.

(d) Approvals. POLB shall obtain and maintain in effect all necessary approvals, consents, permits and licenses with respect to the design and construction of the Locomotive Facility Turnout and Crossover, including, without limitation, all necessary approvals under the California Environmental Quality Act (CEQA) and as required by the POLA and ACTA.

(e) Liability. For the purposes of the design and construction of the Locomotive Facility Turnout and Crossover, POLB hereby agrees to indemnify, defend and save harmless ACTA, POLA, and Railroads, and each of them and their respective officers, directors (if applicable), employees, successors and assigns, agents and representatives (the "Indemnified Parties") for or on account of any liabilities, losses, actions, claims, damages, costs and judgments and all reasonable expenses incurred in connection therewith (including reasonable attorneys' fees) (collectively, "Losses") which may result directly or indirectly from any act or omission of POLB or its tenants, employees, agents, contractors, or invitees relating to activities involved in the design and construction of the Locomotive Facility Turnout and Crossover or this Agreement, including, without limitation, Losses for (i) damage to property, (ii) injury to or death of any person, or (iii) a breach by POLB of the terms of this Agreement or any other agreement affecting or governing the design and construction of the Locomotive Facility Turnout and Crossover, or of any law, ordinance or regulation, or a failure by POLB to obtain or maintain any license, permit, franchise or other governmental approval required by law, it being understood and agreed that all risk of such Losses shall be and is hereby assumed by POLB, except to the extent such

Losses are the result of the negligence or willful misconduct of the Indemnified Party. POLB hereby acknowledges and agrees that no approval or consent provided by ACTA, POLA, UP, and BNSF pursuant to this Agreement shall relieve POLB of its liability obligations hereunder. The provisions of this Section 1(e) shall survive the termination of this Agreement.

(f) Hazardous Substances. As used in this Agreement, the term “Hazardous Substance” means any product, substance, chemical, material or waste, the presence, nature, quantity and/or intensity of which, either by itself or in combination with other materials on or within the area shown in Figure A (“Work Site”), is either: (i) potentially injurious to the public health, safety or welfare, or the environment or the Work Site; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of ACTA, POLA, UP, or BNSF to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, any substance or material deemed hazardous or toxic pursuant to any federal or state statute or regulation. POLB shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees at any time to handle, use, manufacture, store, release or dispose of any Hazardous Substances in or about the Work Site. During the design and construction of the Locomotive Facility Turnout and Crossover, POLB shall notify, in addition to appropriate regulatory agencies, ACTA within two (2) days following the release of any Hazardous Substances onto or from the Work Site. Upon the release, discharge or spill of any Hazardous Substances arising from or caused by POLB, its employees, agents, invitees or affiliated predecessors in interest, POLB, at its cost, shall promptly remove and/or remediate and dispose of all such Hazardous Substances in accordance with the provisions below, and restore the Work Site, to the extent practicable, to the condition it was in prior to the release of the Hazardous Substances.

If POLB discovers or believes that any material being excavated from the Work Site, to the extent such portion is within the Rail Corridor, contains any Hazardous Substances, POLB, at its cost, shall: (i) promptly notify ACTA of POLB’s discovery or belief; (ii) at the request of ACTA, initiate chemical and/or physical analyses of the suspected Hazardous Substances; (iii) promptly submit all laboratory or other test results upon receipt thereof to ACTA; (iv) develop and submit, for approval by ACTA, a remediation plan providing for the disposal and/or treatment of the hazardous materials; (v) treat and dispose of or remove the Hazardous Substances in accordance with all applicable federal, state and local laws; (vi) if Hazardous Substances are removed, replace the same with clean, structurally suitable fill material and cause the excavation to be backfilled and compacted; and (vii) promptly submit copies of all waste manifests to ACTA. Waste manifests shall identify POLB and its contractors, not ACTA, POLA, UP, or BNSF, as the generator of any Hazardous Substances removed pursuant to this provision.

Section 2. Use and Operation of the Locomotive Facility Turnout and Crossover

(a) Use and Operating Agreement Definitions. The parties hereto agree that the Locomotive Facility Turnout and Crossover, as shown on Figures A and B, are facilities that are encompassed by the existing definitions in the Use and Operating Agreement, including but not limited to those definitions for Port-Owned Tracks, Rail Corridor, and Track. The parties hereto further agree that the Locomotive Facility from the 15ft Clear Point northeastward to the Locomotive Facility as shown on Figure A are encompassed by the existing definitions in the Use

and Operating Agreement, including but not limited to those definitions for Port Facilities and Port Rail Agreements. For the avoidance of doubt, the parties hereto acknowledge and agree that ACTA's jurisdiction under the Use and Operating Agreement is not modified or expanded by virtue of this Agreement, but that the Locomotive Facility Turnout and Crossover are facilities within the scope and jurisdiction of the existing Use and Operating Agreement.

(b) **Dispatching.** The parties hereto agree that locomotive movements through the Turnout, into and out of the Locomotive Facility shall be performed according to the terms and conditions of the Use and Operating Agreement, including but not limited to, Article III.

(c) **Maintenance.** The parties hereto agree that maintenance, repairs and replacement of the Locomotive Facility Turnout and Crossover as shown on Figures A and B shall be performed according to the terms and conditions of the Use and Operating Agreement, including but not limited to, Articles VII and VIII.

(d) **Security.** The parties hereto agree that security for the Locomotive Facility Turnout and Crossover as shown on Figures A and B shall be performed according to the terms and conditions of the Use and Operating Agreement.

(e) **Liability.** The parties hereto agree that liability issues (other than those for design and construction as set forth herein) for the Locomotive Facility Turnout and Crossover as shown on Figures A and B shall be subject to the terms and conditions of the Use and Operating Agreement, including but not limited to, Article XI.

(f) **Miscellaneous.** The Parties agree that for any matters not set forth in this Agreement with respect to the use and operation of the Locomotive Facility and Locomotive Facility Turnout and Crossover, any applicable terms and conditions of the Use and Operating Agreement shall apply.

Section 3. Effect on Existing Project Agreements. This Agreement does not and is not intended to amend, change, alter or otherwise modify the provisions of the Use and Operating Agreement. To the extent the terms of this Agreement conflict with the provisions of the Use and Operating Agreement, the provisions of the Use and Operating Agreement shall control.

Section 4. Term: Effectiveness. This Agreement shall become effective upon the last date of execution by the parties hereto and shall remain in effect until the date on which the Use and Operating Agreement is terminated or expires.

Section 5. Severability. Each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law to the fullest extent possible. In the event, however, that any provision contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, then, in order to effect the purposes of this Agreement it shall be construed as if such provision had never been contained herein and the remainder of this Agreement shall have full force and effect.

Section 6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached

therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except have additional signature pages executed by other parties to this Agreement attached thereto.

Section 7. Governing Law. 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.

[Signatures on following page]

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

**ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY**

Dated: _____, 2024

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

Attest: _____
Secretary

APPROVED AS TO FORM

_____, 2024

HYDEE FELDSTEIN SOTO, Los Angeles City Attorney

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

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Dated: _____, 2024

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

APPROVED AS TO FORM AND LEGALITY

_____, 2024

HYDEE FELDSTEIN SOTO, Los Angeles City Attorney
STEVEN Y. OTERA, General Counsel

By _____
Helen J. Sok, Deputy

[Signatures Continue on Next Page]

THE CITY OF LONG BEACH, a
municipal corporation, acting by and
through its Board of Harbor Commissioners

Dated: _____, 2024

By: _____
MARIO CORDERO
Chief Executive Officer

APPROVED AS TO FORM

_____, 2024
DAWN MCINTOSH, Long Beach City Attorney

By _____
Thomas Y. Oh, Deputy City Attorney

BNSF RAILWAY COMPANY,
a Delaware corporation

Dated: _____, 2024

By: _____
(Name), (Title)

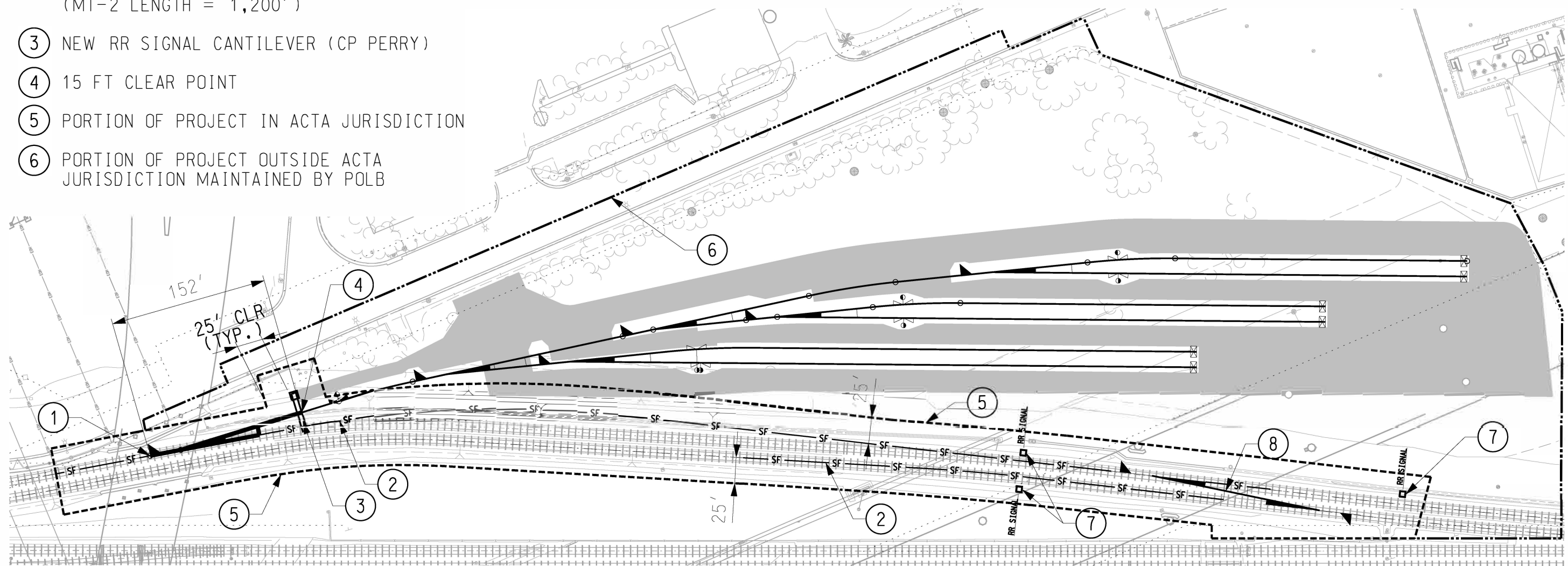
**UNION PACIFIC RAILWAY
COMPANY**, a Delaware corporation

Dated: _____, 2024

By: _____
(Name), (Title)

KEY ITEMS:

- ① NEW NO 9. TURNOUT FROM ACTA MT-2;
POINT OF SWITCH (POWERED) AT MP 17.48
- ② SHIFT EXISTING TRACK MT-1 & MT-2
(MT-1 LENGTH = 500')
(MT-2 LENGTH = 1,200')
- ③ NEW RR SIGNAL CANTILEVER (CP PERRY)
- ④ 15 FT CLEAR POINT
- ⑤ PORTION OF PROJECT IN ACTA JURISDICTION
- ⑥ PORTION OF PROJECT OUTSIDE ACTA JURISDICTION MAINTAINED BY POLB
- ⑦ HIGH/DWARF SIGNALS (CP GASPUR)
- ⑧ NEW NO.11 CROSSOVER (POWERED) AT MP 17.66



LEGEND:

- EXISTING TRACK CENTERLINE
- NEW TRACK
- SF— SHIFT EXISTING TRACK
- - - - PROJECT LIMIT LINE
- PARCEL LINES
- - - - ACTA JURISDICTION

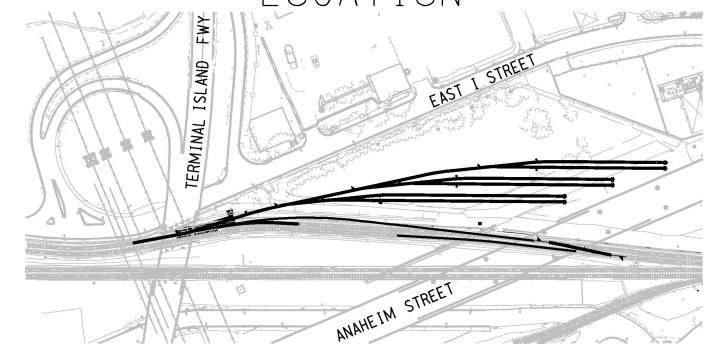


SCALE: 1"=100'



CONCEPT ALIGNMENT

LOCATION



NOT FOR CONSTRUCTION



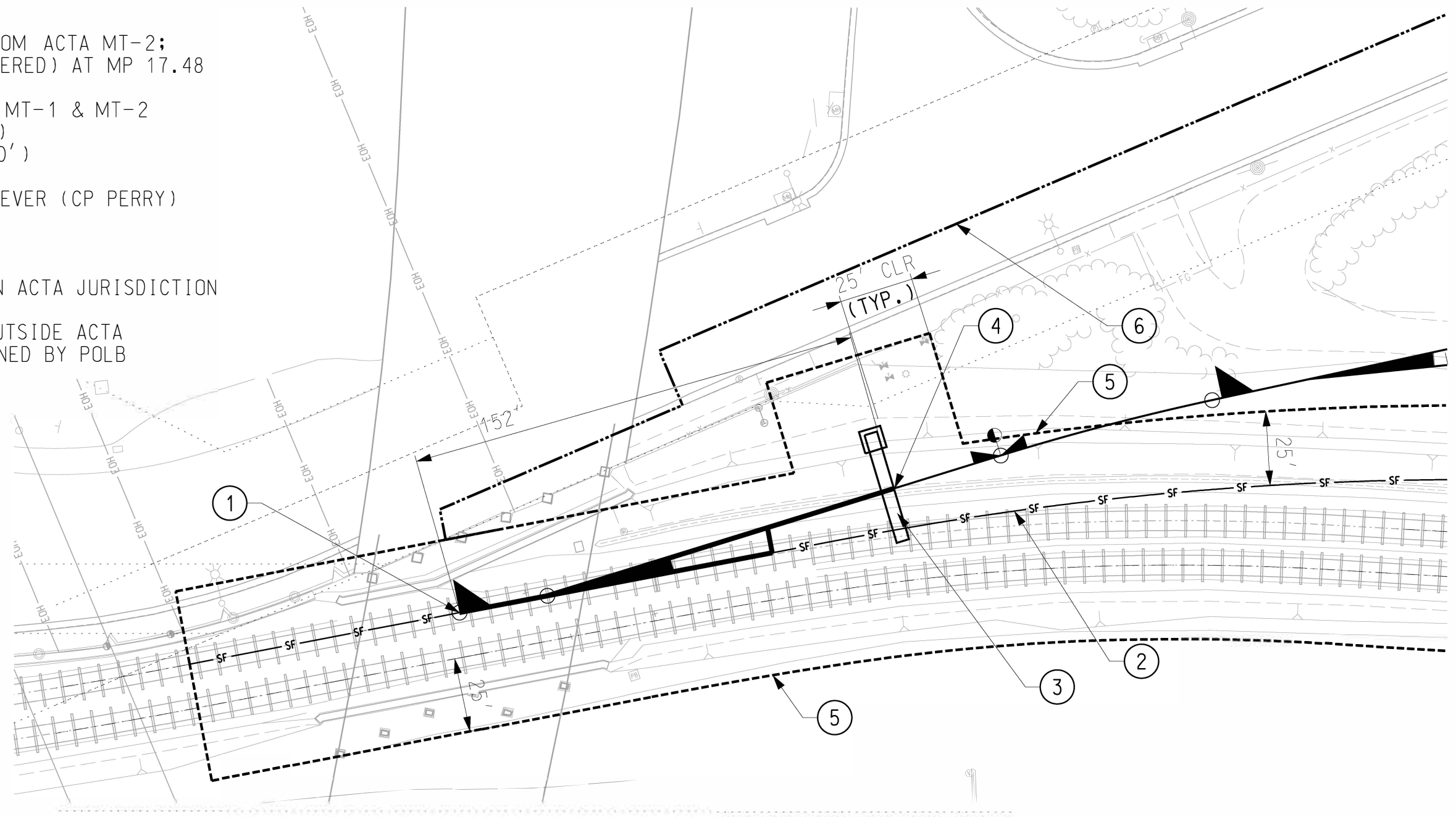
PIER B ON-DOCK RAIL SUPPORT FACILITY PROGRAM
MEMORANDUM OF AGREEMENT
FIGURE A - LOCOMOTIVE FACILITY TURNOUT

LAST UPDATED
3/21/2024

EXHIBIT_A-ACTA_2024-0209.dgn

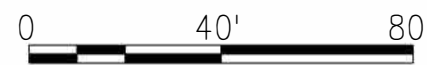
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- ⑥ PORTION OF PROJECT OUTSIDE ACTA JURISDICTION MAINTAINED BY POLB



LEGEND:

- EXISTING TRACK CENTERLINE
- NEW TRACK
- sf— SHIFT EXISTING TRACK
- - - - PROJECT LIMIT LINE
- PARCEL LINES
- ACTA JURISDICTION



SCALE: 1"=40'

CONCEPT ALIGNMENT

NOT FOR
CONSTRUCTION



PIER B ON-DOCK RAIL SUPPORT FACILITY PROGRAM
MEMORANDUM OF AGREEMENT
FIGURE B - LOCOMOTIVE FACILITY TURNOUT

LAST UPDATED
3/21/2024