

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**

3760 KILROY AIRPORT WAY, SUITE 200, LONG BEACH, CA 90806 • (562) 247-7777 • FAX (562) 247-7090

January 20, 2017

**To:** Parties listed on Exhibit A

**Subject:** Notice of Mutual Agreement No. 2017-1 - Request for Approval under Amended and Restated Alameda Corridor Use and Operating Agreement

**Matter:** Term Extension for Alameda Corridor Maintenance Agreement dated as of April 15, 2007, as amended, with Balfour Beatty Infrastructure, Inc. (No. 782)

Dear Sir or Madam:

Reference is made to that certain Amended and Restated Alameda Corridor Use and Operating Agreement (the 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).

The Agreement governs the use and operation of the Alameda Corridor and, among other things, contains provisions which require certain parties to make decisions from time to time by Mutual Agreement (as defined in the Agreement) or unanimous consent/approval. In particular, Mutual Agreement requires the approval from at least three of the following parties: BNSF, UP, POLB, and POLA, and unanimous consent/approval requires the approval of each of the same four entities. Pursuant to the terms of the Agreement, ACTA as an entity does not approve or disapprove Mutual Agreement matters.

Attached as Exhibit B is Notice of Mutual Agreement (NMA) No. 2017-1, for which approval by the requisite parties is requested at this time. The matter to be approved is described in the attached NMA (the "Matter"). Following consideration of the Matter, please forward to ACTA at the address listed above, in writing, the response of your respective entity to either approve or disapprove the Matter, no later than February 28, 2017. Once all responses are received, ACTA will send a letter to the four entities with the results.

If there are any questions, please advise.

Sincerely,

A handwritten signature in blue ink, appearing to read 'John T. Doherty', is written over a horizontal line.

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

**EXHIBIT A**  
**LIST OF PARTIES**

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90733  
Attn: Executive Director  
Email: gene\_seroka@portla.org

Port of Long Beach  
4801 Airport Plaza Drive  
Long Beach, California 90815  
Attn: Chief Executive  
Email: duane.kenagy@polb.com

BNSF Railway Company  
2500 Lou Menk Drive  
AOG -Garden Level  
Fort Worth, Texas 76131  
Attn: Assistant Vice President - Contracts  
& Joint Facilities  
Email: Sarah.bailiff@bnsf.com

Union Pacific Railroad Company  
1400 Douglas Street -Stop 1160  
Omaha, Nebraska 68179  
Attn: Executive Vice President of  
Operations  
Email: jointfacilitycontracts@up.com

Cc:

Email: Brian.Aman@bnsf.com  
Email: JGrinnel@UP.com  
Email: tgioiello@portla.org  
Email: doug.thiessen@polb.com  
Email: hmccloskey@portla.org  
Email: Lauren.Misajon@longbeach.gov

**EXHIBIT B**  
**NOTICE OF MUTUAL AGREEMENT**

**Number: 2017-1**

**Subject: Request for Approval to Extend the Alameda Corridor Maintenance Agreement dated as of April 15, 2007, as amended, with Balfour Beatty Infrastructure, Inc. (No. 782).**

**Recommendation:**

Approve an up to six-month extension to the term of ACTA's Maintenance Agreement (Rail Corridor and Non-Rail Components) dated as of April 15, 2007, as amended, with Balfour Beatty Infrastructure, Inc. which is set to expire on April 14, 2017.

**Discussion:**

The Amended and Restated Use and Operating Agreement (UOA) requires that the Ports and Railroads, through Mutual Agreement, select the Corridor Maintenance Contractor and that ACTA endeavor to enter into an agreement with the selected entity on the business terms specified by the Owner and Railroads.

The existing Maintenance Agreement (Agreement) with Balfour Beatty Infrastructure, Inc. (BBII) expires April 14, 2017. Due to a lengthy negotiating and approval process for the Amended and Restated UOA, the request for proposals (RFP) for a new maintenance contract had to be postponed. The RFP is expected to be issued in January 2017, and the approval of the selection of a maintenance contractor including the business terms for the new agreement are expected to be processed through a separate Notice of Mutual Agreement in March or April 2017. The new agreement with ACTA is anticipated to be ready for execution in May or June of 2017. Therefore, it is requested that the Ports and Railroads provide their approval to extend the existing Agreement by up to six months through October 14, 2017 to enable mobilization in the event a new contractor is awarded the contract and a smooth transition of the work from the existing contractor.

The exact Agreement termination date will be established once the maintenance contractor is selected and a reasonable transition phase, if applicable, is completed. The termination date will be set forth in a written notice from ACTA to BBII. In no event shall the date be later than October 14, 2017 unless additional approval is obtained. The draft amendment to the BBII contract is attached.

**Potential Future 2017 Budget Amendment**

The 2017 Maintenance of Way (MOW) Budget, which describes the maintenance and capital improvement work to be performed by the contractor for calendar year 2017, was approved through Mutual Agreement No. 2016-1 in December 2016. Should ACTA determine during or after the contractor selection process that a 2017 budget revision is required, a request for approval of the revised budget will be processed through a separate Notice of Mutual Agreement at that time.

Attachment to Exhibit B.

### **FIFTH AMENDMENT TO AGREEMENT NO. 782 BETWEEN THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY AND BALFOUR BEATTY INFRASTRUCTURE, INC.**

**THIS FIFTH AMENDMENT** to Agreement No. 782 (defined below) is made and entered into by the **Alameda Corridor Transportation Authority ("ACTA")** and **Balfour Beatty Infrastructure, Inc. ("BBII")**.

**WHEREAS**, the Alameda Corridor Maintenance Agreement (Rail Corridor and Non-Rail Components ("Agreement No. 782") by and between ACTA and Balfour Beatty Rail, Inc. (BBRI), predecessor to BBII, was entered into commencing April 15, 2007; and

**WHEREAS**, at its November 13, 2008 meeting, ACTA's Governing Board approved the First Amendment to Agreement No. 782, amending the Agreement as necessary to clarify certain related procedures; and

**WHEREAS**, at its January 12, 2012 meeting, ACTA's Governing Board approved the Second Amendment to Agreement No. 782, extending the term of the Agreement through December 31, 2015; and

**WHEREAS**, at its February 13, 2014 meeting, ACTA's Governing Board approved the assignment of Agreement No. 782 from BBRI to its affiliate BBII; and

**WHEREAS**, at its January 15, 2015 meeting, ACTA's Governing Board approved the Third Amendment to Agreement No. 782, extending the term of the Agreement through April 14, 2017; and

**WHEREAS**, at its April 9, 2015 meeting, ACTA's Governing Board approved the Fourth Amendment to Agreement No. 782, increasing the Allowed Markup from 5% to 10% for work performed in the repair of the Alameda Street Bridge; and

**WHEREAS**, the parties now desire to amend Agreement No. 782 to extend the term as set forth herein; and

#### **NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

1. **ARTICLE 4, Section 4.1 - Commencement Date and Term**. Section 4.1 of the Agreement is hereby amended by deleting the second and third sentences thereof and replacing them as follows:

"Unless it is terminated earlier in accordance with any provision entitling a party to terminate this Agreement, this Agreement shall terminate on the earlier of (i) October 14, 2017, or (ii) the termination date set forth in a written notice from ACTA to Contractor once a replacement maintenance contractor has been selected in accordance with the Operating Agreement and Contractor has completed all remaining work and/or services directed by ACTA."

2. Except as amended herein above in Item 1, all remaining terms and conditions of Agreement No. 782 remain in full force and effect.
3. Capitalized terms not otherwise defined herein shall have the meaning assigned thereto in Agreement No. 782.

**IN WITNESS WHEREOF**, the parties hereto have executed this Fifth Amendment to Agreement No. 782 as provided below:

**ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY**

Date \_\_\_\_\_ By \_\_\_\_\_  
Chief Executive Officer

**BALFOUR BEATTY INFRASTRUCTURE, INC.**

Date \_\_\_\_\_ By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name and Title)

**ATTESTED (BBII):**

By: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name and Title)

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

**APPROVED AS TO FORM:**  
City Attorney – Michael N. Feuer

By: \_\_\_\_\_  
Deputy City Attorney

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