


ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY

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

July 28, 2017

To: Parties listed on Exhibit A

Subject: Notice of Mutual Agreement No. 2017-3 - 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. 2017-3, 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 via email, the response of your respective entity to either approve or disapprove the Matter, no later than September 1, 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,



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

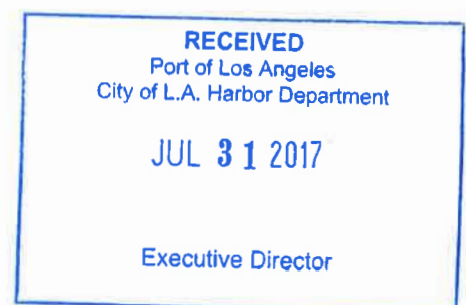


EXHIBIT A

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: Executive Director
Email: mario.cordero@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: MMartinson@UP.com
Email: tgioiello@portla.org
Email: carlo.luzzi@polb.com
Email: hmccloskey@portla.org
Email: Lauren.Misajon@longbeach.gov
Email: duane.kenagy@polb.com

EXHIBIT B
NOTICE OF MUTUAL AGREEMENT

Number: 2017-3

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 through April 14, 2018 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 October 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 October 14, 2017 pursuant to NMA 2017-1 as approved in February 2017. A Request for Proposals (RFP) for Maintenance Services was issued in March 2017, but all proposals were rejected in June 2017 due to certain issues with the proposal submissions. A new RFP is expected to be issued in August 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 October or November 2017. The new agreement with ACTA is anticipated to be ready for execution in December 2017 or January 2018. Therefore, it is requested that the Ports and Railroads provide their approval to extend the existing Agreement by up to six months through April 14, 2018 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 April 14, 2018 unless additional approval is obtained. The draft amendment to the BBII contract is attached.

Potential Future 2017 or 2018 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 and was subsequently amended through approval of the Mutual Agreement No. 2017-2 in June 2017.

In addition, the annual budget review and approval process begins September 1st of each year, which may lead to a new approved 2018 MOW Budget before a new contractor is selected.

Should ACTA determine during or after the contractor selection process that a budget revision is required to the 2017 and/or 2018 approved MOW Budgets, a request for approval of the revised budget(s) will be processed through a separate Notice of Mutual Agreement at such time.

Please provide your acceptance and approval by affixing your signature, name and title below:

Port of Los Angeles

By: _____

Printed Name: _____

Title: _____

Date: _____

Port of Long Beach

By: _____

Printed Name: _____

Title: _____

Date: _____

BNSF Railway Company

By: _____

Printed Name: _____

Title: _____

Date: _____

Union Pacific Railroad Company

By: _____

Printed Name: _____

Title: _____

Date: _____

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

THIS SIXTH 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, at its March 23, 2017 meeting, ACTA's Governing Board approved the Fifth Amendment to Agreement No. 782, extending the term of the Agreement through October 14, 2017; 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 date of October 14, 2017 and replacing it with April 14, 2018.
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.
4. The effective date of this amendment shall be the date of its execution by ACTA's Chief Executive Officer.

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

**ALAMEDA CORRIDOR TRANSPORTATION
AUTHORITY**

Date _____ By _____
Chief Executive Officer

ATTEST

Date _____ By _____
Title _____

BALFOUR BEATTY INFRASTRUCTURE, INC.

Date _____ By _____

(Print Name and Title)

ATTEST

Date _____ By _____
Title _____

APPROVED AS TO FORM:
Michael N. Feuer, City of Los Angeles City Attorney

By: _____
Deputy City Attorney

Date: _____