

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**

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

March 12, 2018

To: Parties listed on Exhibit A

Subject: Notice of Mutual Agreement No. 2018-1 - 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. 2018-1, 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 via email, the response of your respective entity to either approve or disapprove the Matter, no later than April 5, 2018. 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.bailliff@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: 2018-1

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 eight-month extension through December 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 April 14, 2018.

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, 2018 pursuant to NMA 2017-3 as approved in September 2017. A Request for Proposals (RFP) for Maintenance Services was issued in March 2017, but all proposals were rejected in June 2017 due to issues with the RFP requirements and proposal submissions. A new RFP was issued in August 2017, but the proposed contract award was challenged through a protest that is under legal evaluation. As the current contract expires on April 14, 2018, the contract must be extended to: 1) ensure the Corridor is effectively and safely maintained, 2) provide for resolution of the protest, and 3) account for the possibility of a re-issuance of the RFP. Therefore, it is recommended that the term of the Agreement be extended up to eight-months through December 14, 2018.

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 December 14, 2018 unless additional approval is obtained. The draft amendment to the BBII contract is attached.

Potential Future 2018 Budget Amendment

The 2018 Maintenance of Way (MOW) Budget, which describes the maintenance and capital improvement work to be performed by the contractor for calendar year 2018, was approved through Mutual Agreement No. 2017-6 in December 2017.

The new contractor selection may result in a budget revision to the 2018 approved MOW Budget, and a request for approval of the revised budget will be processed through a separate Notice of Mutual Agreement at a future 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: _____

Attachment to Exhibit B.

Attachment to Exhibit B. NMA 2018-1

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

THIS SEVENTH 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, at its September 22, 2017 meeting, ACTA's Governing Board approved the Sixth Amendment to Agreement No. 782, extending the term of the Agreement through April 14, 2018; 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 April 14, 2018 and replacing it with December 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 Seventh 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: _____