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## Alameda Corridor Transportation Authority

April 11, 2019

<b>To:</b>	Governing Board
<b>From:</b>	John T. Doherty, Chief Executive Officer
<b>Subject:</b>	<i>Approval of Agreement No. C0885 with RailWorks Track Services, Inc.</i> <b>(APPROVAL)</b>

**Recommendation:**

Approve Agreement No. C0885 with RailWorks Track Services, Inc. (RailWorks) for maintenance services on the Alameda Corridor commencing on or about May 1, 2019 through April 14, 2024 with an additional five-year extension option and authorize the Chief Executive Officer or Chief Financial Officer to execute said agreement.

**Discussion:**

Section 2.5d of the Amended and Restated Use and Operating Agreement (UOA), amongst the Ports, Railroads, and ACTA, dated as of December 15, 2016, provides that the Owner (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 Ports and Railroads.

At least three of the four parties responsible for the selection of the Maintenance Contractor under the UOA (BNSF, UP, POLB, and POLA) are required to approve: 1) the selection of RailWorks, 2) the business terms of the Maintenance Agreement, and 3) the required revisions to the 2019 Maintenance of Way (MOW) and Operating and Maintenance (O&M) Budgets. The four parties unanimously approved these items through First Revised Notice of Mutual Agreement (NMA) No. 2019-1 in March/April 2019.

The ACTA Board is now requested to approve the execution of the Agreement with RailWorks, which incorporates the business terms approved by the Ports and Railroads including the MOW Budget for the first Contract Year commencing on or about May 1, 2019 through December 31, 2019.



The items approved by the Ports and Railroads are more fully described as follows:

1. *Selection of the Alameda Corridor Maintenance Contractor*

As cited above, the UOA specifies that the Maintenance Contractor is to be selected by the Ports and Railroads.

The Maintenance Contractor is responsible for the maintenance of the 20-mile long Alameda Corridor, including all track, signals, communication systems, and most right-of-way and structures. The existing Maintenance Agreement with Balfour Beatty Rail Infrastructure, Inc. (BBII) has been in place since April 15, 2007, and expires August 14, 2019 as approved in November 2018 via NMA 2018-6, and the ACTA Board in December 2018. Although the existing contract expires August 14, 2019, it will be terminated earlier at the conclusion of a transition period between the BBII and RailWorks, estimated at this time to be May 31, 2019.

A Request for Proposals (RFP) was issued on August 15, 2018 by ACTA after review by the Ports and Railroads. Four proposals were received by the October 3, 2018 deadline. The Port of Los Angeles administered the evaluation and selection process. The proposals were evaluated by a four-member panel consisting of a representative from each Port and each Railroad. Pursuant to the UOA, ACTA does not participate in the selection, but does administer the eventual contract. Interviews of all four proposers were conducted by the evaluation panel on November 7, 2018. The evaluation criteria and process were described in the RFP.

A summary of the scoring and ranking is contained in Transmittal #1. The panel unanimously scored RailWorks Track Services, Inc. (RailWorks) as the highest ranked firm.

2. *Maintenance Service Agreement Business Terms*

The UOA specifies that ACTA shall endeavor to enter into an agreement with the selected entity on the business terms specified by the Owner (Ports) and Railroads.

Staff from the Ports and Railroads approved the business terms of the proposed Maintenance Agreement included in the RFP. After selection of RailWorks, these entities also participated in additional negotiations with RailWorks, which included discussions of the business terms of the new Maintenance Agreement. After ACTA's Co-Counsel reviewed and approved the requested modifications to the proposed Maintenance Agreement, the Ports and Railroads approved the Maintenance Agreement through First Revised NMA 2019-1, included as Transmittal #2.

The term of the new Maintenance Agreement will be approximately five years commencing on or about May 1, 2019 through April 14, 2024 with an additional five-year renewal option to extend the Agreement through April 14, 2029 subject to approval of the Ports and Railroads by Mutual Agreement near the end of the first 5-year term. The value of the new 5-year contract cannot be exactly quantified over the full 5 or 10 year terms, because the MOW Budget is negotiated annually by RailWorks, the Ports, and the Railroads based on forecasted needs.

3. Amended 2019 MOW Budget (Transmittal #3) and O&M Budget (Transmittal #4)

One of the key business terms for the Maintenance Agreement is the MOW Budget for the first Contract Year commencing on or about May 1, 2019 through December 31, 2019.

The original 2019 MOW and O&M Budgets, as negotiated with BBII in October 2018, were approved by the Ports and Railroads through NMA 2018-5 in November 2018. The Ports and Railroads were advised at that time that a revision would be required when the selection process was complete to account for a new maintenance contract.

The Amended 2019 MOW and O&M Budgets, recently approved by the Ports and Railroads via First Revised NMA 2019-1, incorporate the value of services to be performed by both BBII and RailWorks. Pursuant to the UOA, ACTA does not approve the annual budgets, but incorporates the Ports and Railroads approved O&M Budget into the annual ACTA Program Budget.

*MOW Budget*

The MOW Budget is essentially the contract value of the maintenance services for a given calendar year. The Amended 2019 MOW Budget is \$8,705,802 (\$5,382,527 for RailWorks and \$3,323,275 for BBII) and its funding is split between ACTA fee revenue (about 55%) and payment by the Railroads (about 45%).

The Amended 2019 MOW Budget is divided into three categories: labor positions, operations maintenance, and capital work, as shown in the table below.

**MOW Budget Summary**  
*(in millions of dollars)*

<b>MOW Budget</b>	<b>Proposed Amended 2019</b>	<b>Original Approved 2019</b>	<b>Variance</b>	<b>% Increase</b>
A. Labor	\$ 2.475	\$ 2.045	\$ 0.430	21.0%
B. Operations Maintenance	2.970	2.637	0.333	12.6%
C. Capital Costs	3.260	3.026	0.234	7.7%
Total MOW	\$ 8.705	\$ 7.708	\$ 0.997	12.9%

*O&M Budget*

The Amended 2019 O&M Budget of \$13,845,691 is the sum of the Amended 2019 MOW Budget of \$8,705,802 (the value paid to the maintenance contractor(s)), a \$300,000 contingency (to be added as necessary to the contract value), and \$4,839,888 in other costs for insurance and such services as security and dispatching, as shown in the table below. Only about 4% of these other costs are paid from ACTA fee revenue (Reserve Account), and about 96% of the other costs are

paid by the Railroads either directly or from monthly deposits made to ACTA known as Maintenance-of-Way Charges.

**O&M Budget Summary**  
(in millions of dollars)

O&M Budget	Proposed Amended 2019	Original Approved 2019	Variance	% Increase
I. MOW Contractor <sup>(1)</sup>	\$ 5.446	\$ 4.681	\$ 0.765	16.34%
II. Capital Costs <sup>(2)</sup>	\$ 3.260	\$ 3.026	\$ 0.234	7.73%
Contingency	\$ 0.300	\$ 0.300	-	0.00%
III. Operating & Other	\$ 4.840	\$ 4.522	\$ 0.318	7.03%
Total O&M	\$ 13.846	\$ 12.529	\$ 1.317	10.51%

<sup>(1)</sup> A+B from MOW Budget

<sup>(2)</sup> C from MOW Budget

*Items of note concerning the Budgets and the Agreement:*

1. The Budgets reflect apportionment of the 2019 work between BBII and RailWorks, as well as new labor and equipment rates for RailWorks; mobilization and transition costs; and 2019 work scope revisions including carry-over of unfinished 2018 budgeted work. The 2019 work scope revisions and comments are outlined in Transmittal #5.
2. Budgets assume BBII performance for the first 5 months (January 1 to May 31) and RailWorks performance for the last 8 months (May 1 to December 31), anticipating a 30-day overlap for transition (May 1 to May 31).
3. Unused Amended 2019 MOW Budget amounts and unaccomplished 2019 work scope by BBII will automatically transfer to RailWorks under the Agreement after transition.
4. Decisions regarding the use of the contingency fund were previously approved by the former Alameda Corridor Operating Committee. Because the Operating Committee no longer exists, delegation was sought through First Revised NMA 2019-1 for a designated individual or designated individuals within each entity to be given authority to approve the allocation and use of contingency funds as needed for the MOW Budget, including unfunded and underfunded work. Further delegation was sought through the same First Revised NMA 2019-1 for such designated individual(s) to have authority to approve the shift of amounts from one MOW Budget line item to another as needed, provided that the total MOW Budget (which is the MOW contract value) plus the \$300,000 contingency is not exceeded. Each of the entities provided their designee(s) as part of their notification of their approval of First Revised NMA 2019-1. Such delegated authority will provide additional budgetary flexibility and efficiency as to not hold up necessary operations and maintenance work pending Harbor

Commission/Railroad approval any time an individual estimated line item may be exceeded. Approvals from the designees of at least three of the four parties (BNSF, UP, POLB, and POLA) are required to authorize the allocation and use of contingency funds and the transfer of funds from one MOW Budget item to another.

**Budget Impact:**

Funds for this Agreement will be amended as necessary into the FY19 ACTA Program Budget and included in the FY20 Program Budget.

**Co-General Counsel Review:**

ACTA's Co-General Counsel has reviewed and approved the proposed Agreement as to form. ACTA's Co-General Counsel has reviewed this Board Report and the proposed action raises no legal issues at this time.

Transmittals:

- Transmittal #1 - Summary of Scoring and Ranking
- Transmittal #2 - Maintenance Agreement
- Transmittal #3 - Amended 2019 Maintenance of Way (MOW) Budget
- Transmittal #4 - Amended 2019 Operating & Maintenance (O&M) Budget
- Transmittal #5 - 2019 Work Scope Revisions and Comments