

**ALAMEDA CORRIDOR PROJECT DEFINITION
MEMORANDUM OF AGREEMENT**

THIS AGREEMENT (this "Agreement") is made and entered into as of [____], 2017 by and among 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, pursuant to California Government Code Section 6500 et seq. (the "Act") and the Amended and Restated Joint Exercise of Powers Agreement dated as of December 18, 1996 (as may be amended from time to time, the "JPA"), between the City of Long Beach and the City of Los Angeles, ACTA is authorized to develop and construct the Alameda Corridor (as defined in the JPA) and projects or facilities which are related to the Alameda Corridor;

WHEREAS, Article I of the Master Trust Indenture dated as of January 1, 1999, by and between ACTA and U.S. Bank Trust National Association, as Trustee (as amended and supplemented, the "Master Indenture") provides that the Project (as defined in the Master Indenture) may include, among other things, extensions, expansions, related improvements and replacements to Project components duly approved by ACTA, the Ports and the Railroads;

WHEREAS, Article I of the Amended and Restated Alameda Corridor Use and Operating Agreement dated as of December 15, 2016, by and among ACTA, the Ports and the Railroads (as may be amended from time to time, the "Use and Operating Agreement") provides that the Project (as defined in the Use and Operating Agreement) includes, among other things, any amendments to the Plan adopted by ACTA on January 14, 1993 (as defined in the Use and Operating Agreement) that are consistent with the provisions of the Use and Operating Agreement;

WHEREAS, UP desires to undertake certain improvements and replacements to one of its track connections between the Alameda Corridor and the Dolores Yard (as defined in the Use and Operating Agreement) that would enhance the efficiency and operations of the Alameda Corridor, which improvements and replacements are described in Exhibit "A" hereto (the "Dolores Yard Crossover");

WHEREAS Section 7.4(a) of the Use and Operating Agreement provides that if any betterment, improvement or upgrade to the Track and/or Track Support Structures made

after Substantial Completion (each as defined in the Use and Operating Agreement) will benefit only one of the Railroads, then only the Railroad so benefited shall pay the costs of such betterment, improvement or upgrade; and

WHEREAS, ACTA, the Ports and the Railroads desire to execute this Agreement providing the terms and conditions pursuant to which the Dolores Yard Crossover will be designed, constructed, operated and maintained, consistent with the terms of the Master Trust Indenture and 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. Terms and Conditions Relating to Dolores Yard Crossover.

(a) **Design.** UP hereby agrees to prepare or cause to be prepared a design plan (the “Design Plan”) with respect to the Dolores Yard Crossover to be approved by ACTA prior to the start of construction, which approval will not be unreasonably withheld. UP agrees that the Design Plan shall be generally consistent with the existing Track Schematic Drawings and the current operations of the Project.

(b) **Construction.** ACTA shall cause its contractor(s) to construct and install the portion of the Dolores Yard Crossover that begins on the Rail Corridor (as defined in the Use and Operating Agreement) and ends at the insulated joints of the control point (the “Rail Corridor Connection”) in accordance with the Design Plan. ACTA shall also cause its contractor(s) to remove the existing switch on the Rail Corridor and undertake any work related to such removal. All costs and expenses incurred by ACTA with respect to design, permitting, construction and installation work related to the Rail Corridor Connection and the removal of the existing switch shall be fully reimbursed by UP as provided in Section 1(c) and Section 1(h) hereof. Prior to undertaking the work, ACTA shall deliver to UP for its review and approval, with such approval not being unreasonably withheld, a preliminary estimate of the anticipated costs and expenses associated with the construction and installation of the Rail Corridor Connection. During such construction and installation, ACTA shall provide UP with periodic updates (but no less than monthly) with respect to any anticipated or proposed changes to the costs and expenses associated with the work. UP shall construct and install the remaining portion of the Dolores Yard Crossover in accordance with the Design Plan.

UP agrees to notify and obtain written approval from ACTA, which approval will not be unreasonably withheld, at least ten (10) days prior to undertaking any work connected with the Dolores Yard 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 Dolores Yard Crossover. 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 UP and/or its contractors. All such work shall be performed in accordance with all applicable laws, regulations and orders. UP shall provide at least ten (10) days written notice to ACTA following completion of the work in order for ACTA and/or its representatives to inspect the completed project prior to the commencement of operations.

ACTA shall cause its contractor(s) and/or consultant(s) to design and undertake all necessary modifications to the Rail Corridor's signal system in order to accommodate the Dolores Yard Crossover. The design of such modifications shall be subject to the review and approval by UP prior to such modifications being made, which approval shall not be unreasonably withheld. UP shall fully reimburse ACTA for such work as provided in Section 1(c) and Section 1(h) hereof.

ACTA and UP agree to cooperate in good faith in the scheduling and coordination of all work to the end that the construction of the Dolores Yard Crossover will progress as expeditiously as possible under the circumstances and without any unreasonable interference to operations on the Rail Corridor.

(c) Cost. In accordance with Section 7.4(a) of the Use and Operating Agreement, UP agrees to be solely responsible for all costs and expenses directly associated with the permitting, design and construction of the Dolores Yard Crossover, including, without limitation, (i) removal of the existing switch 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 Rail Corridor Connection as provided in Section 1(b), (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 UP; provided, however, that the activities of ACTA officers and employees in the preparation and administration of this Agreement are not reimbursable expenses. ACTA shall deliver to UP a preliminary estimate of the anticipated costs and expenses associated with the work to be undertaken by ACTA or its contractors hereunder and shall thereafter provide UP with periodic updates (but no less than monthly) with respect to any anticipated or proposed changes to such costs and expenses.

(d) Use and Operation; Maintenance; Security. The Dolores Yard Crossover shall be used exclusively by UP or its agents for the purpose of operating trains to and from the Rail Corridor to UP's Dolores Yard consistent with the terms of the Use and Operating Agreement. UP shall have the exclusive right and obligation to dispatch and control rail freight service up to the Rail Corridor Connection; provided, however, any trains crossing or operating on the Rail Corridor shall be subject to the dispatching priority and dispatching control provisions of the Use and Operating Agreement. UP shall perform all such operations and dispatching at its sole cost and expense in accordance with all applicable laws, rules and

regulations.

In accordance with Section 8.4 of the Use and Operating Agreement, UP shall be solely responsible for all maintenance, repair and replacement of the Dolores Yard Crossover up to the Rail Corridor Connection. The Rail Corridor Connection shall be maintained, repaired and replaced by ACTA and paid as M&O Charges (as defined in the Use and Operating Agreement) in accordance with the terms of the Use and Operating Agreement. Except as expressly set forth in the immediately preceding sentence, none of ACTA, the Ports or BNSF shall have any responsibility for inspecting, maintaining, servicing or repairing the portion of the Dolores Yard Crossover beyond the Rail Corridor Connection or any trains, track support structures or any other equipment used by UP on the property.

UP shall be solely responsible for providing all security services and measures with respect to the Dolores Yard Crossover. UP assumes all risk of theft, vandalism or other damages to the property, lading or equipment owned or operated by UP, its employees, contractors, agents, representatives or freight shippers.

(e) Liability. For the purposes of the design, construction and operation of the Dolores Yard Crossover, UP hereby agrees to indemnify, defend and save harmless ACTA, the Ports and BNSF 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 UP or its tenants, employees, agents, contractors, invitees, shippers or third parties relating to activities involved in the design and construction of the Dolores Yard Crossover or this Agreement, including, without limitation, Losses for (i) damage to property, (ii) injury to or death of any person, (iii) a breach by UP of the terms of this Agreement or any other agreement affecting or governing the design and construction of the Dolores Yard Crossover, or of any law, ordinance or regulation, or a failure by UP to obtain or maintain any license, permit, franchise or other governmental approval required by law, or (iv) the presence during the term hereof of UP, its employees, agents, contractors, invitees, shippers or affiliates, or UP trains or equipment on or around the track or track support structures, it being understood and agreed that all risk of such Losses shall be and is hereby assumed by UP, except to the extent such Losses are the result of the gross negligence or willful misconduct of the Indemnified Party. UP hereby acknowledges and agrees that no approval or consent provided by ACTA pursuant to this Agreement shall relieve UP of its liability obligations hereunder. The provisions of this Section 1(e) shall survive the termination of this Agreement.

(f) Approvals. UP hereby agrees that it shall obtain and maintain in effect all necessary approvals, consents, permits and licenses with respect to the design, construction, operation and maintenance of the Dolores Yard Crossover, including, without limitation, all

necessary approvals under the California Environmental Quality Act (CEQA).

(g) **Ownership of Improvements.** UP shall retain ownership of the Dolores Yard Crossover improvements up to the Rail Corridor Connection. Nothing in this Agreement shall be construed as granting or reserving to UP any interest or right in the property other than the rights expressly provided by this Agreement. Other than trackage and track support structures which removal has been provided for in this Agreement, UP shall not direct or remove any trackage or track support structures on property owned by or licensed to ACTA without ACTA's prior written consent, which consent shall not be unreasonably withheld or delayed.

(h) **Invoicing and Payment.** ACTA shall invoice UP for all costs and expenses incurred by or on behalf of ACTA in connection with the Dolores Yard Crossover. Within thirty (30) days of receipt of any invoice from ACTA, UP shall tender payment in full to ACTA.

Section 2. Incorporation of Dolores Yard Crossover into Definition of Project.

(a) **Master Indenture.** The parties hereby agree that the Dolores Yard Crossover shall constitute improvements and replacements to the Project, as defined in Article I of the Master Indenture, and that such Dolores Yard Crossover shall be deemed part of the Project subject to all terms and conditions applicable to the Project as set forth in the Master Indenture.

(b) **Use and Operating Agreement.** The parties hereby agree that the Plan is hereby amended to include the Dolores Yard Crossover. In accordance with Article I of the Use and Operating Agreement, the parties hereby agree that such amendment to the Plan is consistent with the provisions of the Use and Operating Agreement.

Section 3. Effect on Existing Project Agreements. Except as expressly set forth in this Agreement, this Agreement does not and is not intended to amend, change, alter or otherwise modify the provisions of the Master Indenture or the Use and Operating Agreement.

Section 4. Effectiveness. This Agreement shall become effective upon the execution by the parties hereto.

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 to this Agreement have caused their duly authorized representatives to execute it as of the day and year first above written.

ALAMEDA CORRIDOR
TRANSPORTATION
AUTHORITY, a Joint Powers Authority

Approved as to form this _____ day
of _____, 2017.

By: _____
John T. Doherty
Chief Executive Officer

By: _____
Name: _____
Its: _____

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

Approved as to form this _____ day
of _____, 2017.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

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

Approved as to form this _____ day
of _____, 2017.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

The BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____
Name: _____
Its: _____

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____

Name: _____

Its: _____

Exhibit A

Description of Dolores Yard Crossover

[to come]