

**ALAMEDA CORRIDOR - DOLORES YARD CROSSOVER PROJECT
MEMORANDUM OF AGREEMENT**

THIS AGREEMENT (this "Agreement") is made and entered into as of _____, 2021 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, UP desires to undertake certain improvements and replacements to one of the Track connections between the Alameda Corridor and the Dolores Yard (each as defined in the Amended and Restated Use and Operating Agreement dated as of December 15, 2016 (as may be amended from time to time, the "Use and Operating Agreement")) that would enhance the efficiency and operations of the Alameda Corridor, which improvements and replacements are shown on Figure "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;

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 Use and Operating Agreement; and

WHEREAS, capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning set forth in the Use and Operating Agreement, by and among ACTA, the Ports and the Railroads.

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 Alameda Corridor.

(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 Clear Point (i.e., the center line track separation of 15 feet, located 200 feet from point of switch of new turnout from ACTA Track 3) as shown on Figure B (the “Dolores Yard South End Connection”) in accordance with the Design Plan. The portion of the Dolores Yard Crossover which extends from the Dolores Yard to the Dolores Yard South End Connection as shown on Figure B shall hereinafter be referred to as “UP’s Portion.” ACTA shall also cause its contractor(s) to remove the existing turnout 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 Dolores Yard South End Connection and the removal of the existing turnout shall be fully reimbursed by UP as provided in Section 1(c) and Section 1(i) 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 Dolores Yard South End 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 (also known as “UP’s Portion”) 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. ACTA shall have the right to approve of all work related to the Dolores Yard Crossover and may require UP to make corrections to any work which is noncompliant with the Design Plan and/or industry construction standards. 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(i) 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 with minimal, if any, interference with 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 turnout 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 Dolores Yard South End 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. 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 on UP's Portion; 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, at its sole cost and expense, such operations and dispatching on UP's Portion and shall order and direct the movement of all Trains using Trackage on UP's Portion 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 UP's Portion. The Dolores Yard South End Connection shall be maintained, repaired and replaced by ACTA and paid as M&O Charges 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, replacing or repairing UP's Portion or any Trackage, Track Support Structures, trains or any other equipment used by UP on the property or in connection with the Dolores Yard Crossover.

UP shall be solely responsible for providing all security services and measures with respect to UP's Portion. UP assumes all risk of theft, vandalism or other damages to UP's Portion, and to 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 and the use of UP's Portion, 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) Hazardous Substances. As used in this Agreement, the term "Hazardous Substance" means any product, substance, chemical, material or waste, the presence, nature, quantity and/or intensity of which, either by itself or in combination with other materials on UP's Portion, is either: (i) potentially injurious to the public health, safety or welfare, or the environment or UP's Portion; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of the ACTA, the Ports, or BNSF to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, any substance or material deemed hazardous or toxic pursuant to any federal or state statute or regulation. UP shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees at any time to handle, use, manufacture, store, release or dispose of any Hazardous Substances in or about UP's Portion. UP also agrees to provide to ACTA a surety bond to assure removal of such Hazardous Substances from UP's Portion if at any time ACTA demands such bond and in an amount determined by ACTA in its

sole and absolute discretion.

During the design and construction of the Dolores Yard Crossover and UP's use and occupancy of UP's Portion, UP shall notify, in addition to appropriate regulatory agencies, ACTA within two (2) days following the release of any Hazardous Substances onto or from UP's Portion. Upon the release, discharge or spill of any Hazardous Substances arising from or caused by UP, its employees, agents, invitees or affiliated predecessors in interest, UP, at its cost, shall promptly remove and/or remediate and dispose of all such Hazardous Substances in accordance with the provisions below, and restore UP's Portion, to the extent practicable, to the condition it was in prior to the release of the Hazardous Substances.

If UP discovers or believes that any material being excavated from UP's Portion, to the extent such portion is on Port property, contains any Hazardous Substances, UP, at its cost, shall: (i) promptly notify ACTA of UP's discovery or belief; (ii) at the request of ACTA, initiate chemical and/or physical analyses of the suspected Hazardous Substances; (iii) promptly submit all laboratory or other test results upon receipt thereof to ACTA; (iv) develop and submit, for approval by ACTA, a remediation plan providing for the disposal and/or treatment of the hazardous materials; (v) treat and dispose of or remove the Hazardous Substances in accordance with all applicable federal, state and local laws; (vi) if Hazardous Substances are removed, replace the same with clean, structurally suitable fill material and cause the excavation to be backfilled and compacted; and (vii) promptly submit copies of all waste manifests to ACTA. Waste manifests shall identify UP and its contractors, not ACTA, the Ports or BNSF, as the generator of any Hazardous Substances removed pursuant to this provision.

(g) 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) and as required by the Ports. Approvals required by the Ports include, without limitation, Harbor Engineer's Permit for railroad elements of the project; joint revocable permits for the relocation of power lines; and joint revocable permits for construction access related to Valero retaining wall.

(h) Ownership of Improvements. UP shall retain ownership of the Dolores Yard Crossover improvements located on UP's property. 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.

(i) 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. References to Dolores Yard South End Connection. The parties hereby agree that the Dolores Yard South End Connection as defined in Section 1(b) shall be deemed part of the Rail Corridor for purposes of the Use and Operating Agreement and all references to the connection at the south end of the Rail Corridor to the Dolores Yard in the Use and Operating Agreement and the UP C&M Agreement shall hereinafter be deemed to refer to the Dolores Yard South End Connection.

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 Use and Operating Agreement or the UP C&M Agreement. To the extent the terms of this Agreement conflict with the provisions of the Use and Operating Agreement, the provisions of the Use and Operating Agreement shall control.

Section 4. Term; Effectiveness. This Agreement shall become effective upon the execution by the parties hereto and shall remain in effect until the date on which the Use and Operating Agreement is terminated or expires.

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 _____, 2021.

By: _____
Michael Leue
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 _____, 2021.

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 _____, 2021.

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: _____

Figure A

Map of Dolores Yard Crossover Project

DOLORES YARD CROSSOVER PROJECT FIGURE A

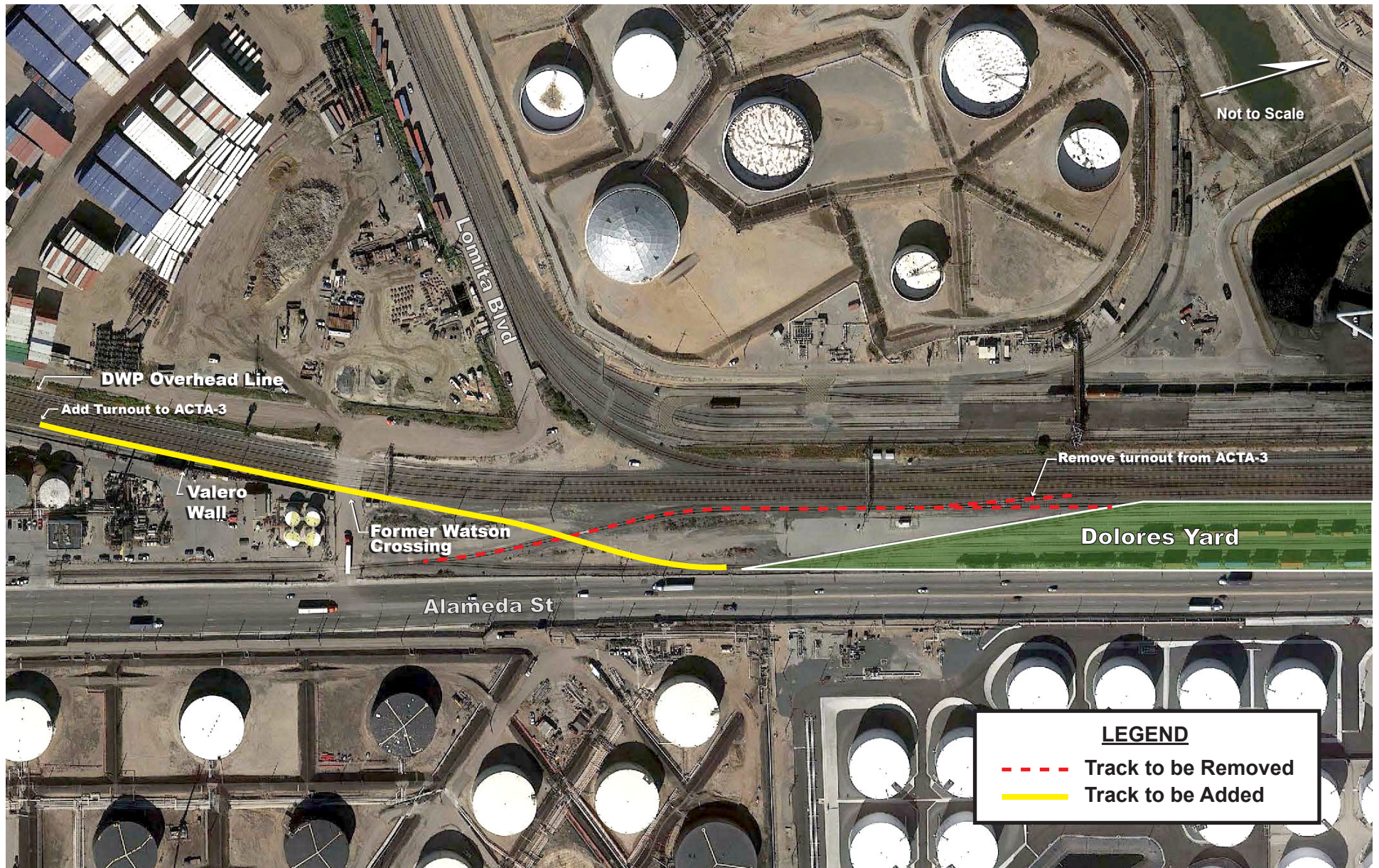


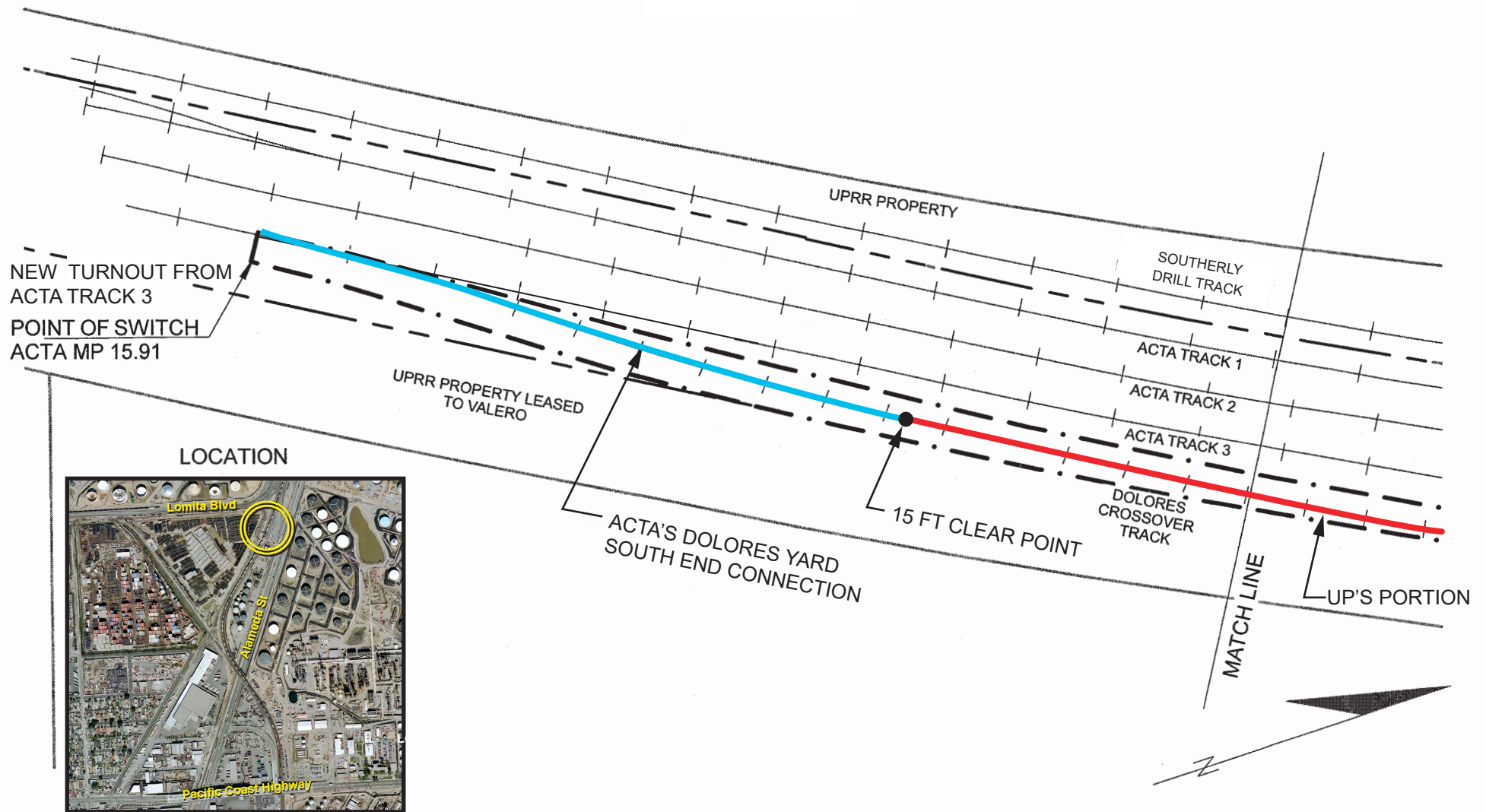
Figure B

Dolores Yard Crossover Project

Showing Joint Ports Property and

Delineating ACTA's and UP's Portions

FIGURE B
SHEET 1 OF 2



PERMIT AREA ON PORTS' ROW:
500 FT +/- LONG BY VARIABLE WIDTH
6,510 +/- SQ. FT. AREA

ACTA'S PORTION



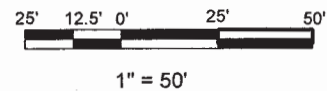
UP'S PORTION



JOINT PORTS' RIGHT OF WAY SHOWN BY

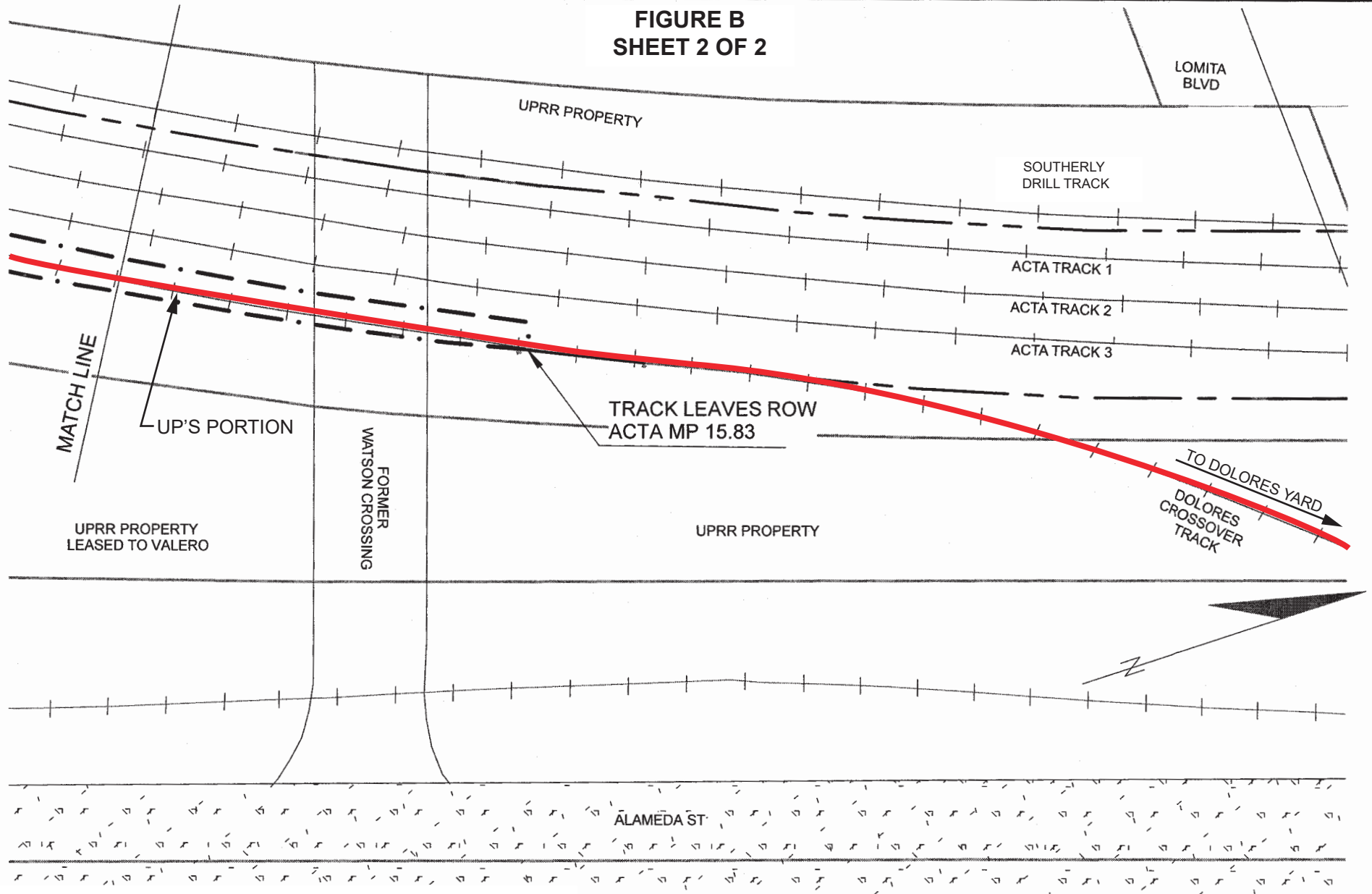


PERMIT AREA SHOWN BY



DOLORES YARD CROSSOVER PROJECT				
PERMITTEE UNION PACIFIC RAILROAD COMPANY				
RR	SP SAN PEDRO BR	MP	AS SHOWN	FACILITY SWITCH, TURNOUT, AND TRACK
CITY LOS ANGELES			COUNTY LOS ANGELES	
SCALE	AS SHOWN	REVISION	DATE 4/22/2020	SHEET NO.

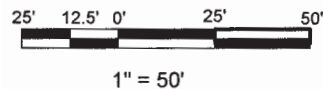
FIGURE B
SHEET 2 OF 2



UP'S PORTION

JOINT PORTS' RIGHT OF WAY SHOWN BY

PERMIT AREA SHOWN BY



DOLORES YARD CROSSOVER PROJECT				
PERMITTEE		UNION PACIFIC RAILROAD COMPANY		
RR	UP SAN PEDRO BR	MP	AS SHOWN	FACILITY PRIVATE CROSSING
CITY	LOS ANGELES		COUNTY	LOS ANGELES
SCALE	AS SHOWN	REVISION	DATE	SHEET NO.
			4/22/2020	