

# **ALAMEDA CORRIDOR INSURANCE BROKERAGE SERVICES**

**Request for Proposals dated May 23, 2024**

## ***Responses to Questions***

Issued June 11, 2024

- 1. On your bid for Insurance brokerage, can you tell me who is the current broker and what their fees are?**

ACTA's response: The current insurance brokerage firm is Willis Towers Watson Insurance Services West, Inc. Please see Transmittal 1 – Compensation for fees.

- 2. Can I see a copy of their last submitted proposal?**

ACTA's response: Please see Transmittal 2 – 2019 incumbent real estate broker proposal.

- 3. Provide sample copies of any contracts whether finalized or draft pertaining to construction management and development teams.**

ACTA's response: Please see Transmittal 3 – Moffatt and Nichol agreement.

- 4. Provide organizational chart of holdings for this project along with an overview description of holdings and contracts pre construction and any that are yet to be procured.**

ACTA's response: ACTA is a joint powers authority. It operates the corridor under a Use Permit from the Port of Long Beach and the Port of Los Angeles. There are no ongoing contracts. Please see Transmittal 4 – Use Permit.

**5. Estimate the number of individual contracts that will need to be reviewed for the holdings.**

ACTA's response: ACTA is a joint powers authority. It operates the corridor under a Use Permit from the Port of Long Beach and the Port of Los Angeles. There are no ongoing contracts. Please see Transmittal 4 – Use Permit.

**6. Provide operations organizational chart and overview of how the construction contracts and operational phases have been put out to bid.**

ACTA's response: Please see Transmittal 5 – ACTA Organization Chart.

**7. Provide a schedule of current coverage in place.**

ACTA's response: Please see Transmittal 6 – Insurance Program Schematic.

**8. Describe any pre construction work undertaken if any and mark on the schedule any policies that were procured specifically for this.**

ACTA's response: There is no construction work in progress on the Corridor. The Alameda Corridor was completed approximately 22 years ago.

**9. Provide details of any existing risk control services under contract and describe any that will be ongoing procured directly by ACTA specifically for this project.**

ACTA's response: Risk control services are provided by the Ports as the property owner. ACTA's insurance broker also currently and in the future provides the services as described in items 2 – 4 of the Scope of Work. See Below.

2. Assist in identifying and assessing the magnitude of ACTA risks and in determining the need for insurance as a risk-financing tool. Monitor ACTA operations and loss exposures and make any appropriate recommendations for coverage changes or new coverages.
3. Perform all on-site inspections and data gathering necessary to prepare underwriting submissions to insurance markets.
4. Recommend an overall program structure to address ACTA's property and liability risks.



Transmittal 1

Compensation

## **Appendix B**

### **I. Annual Compensation**

For the services provided by Broker, including all time and expenses, ACTA shall pay Broker an annual fee of **\$70,000**, to be invoiced and paid in quarterly installments of \$17,500 starting ninety days from the effective date of the Agreement. Broker shall submit invoices on a quarterly basis during the term of the Agreement. Neither Broker nor any proprietary, affiliated, or subsidiary entity of Broker shall receive other compensation for services under the Agreement unless authorized in writing by ACTA or as authorized in Section II below.

### **II. Performance Evaluation Compensation**

In addition to the base annual fee, ACTA may pay Broker up to an additional \$15,000 annually based on Broker's performance during the prior year period. In September of the year after the effective date of the Agreement, and each September thereafter while the Agreement is in force, ACTA shall evaluate Broker's performance in five areas and award points based on such performance, as follows:

1. Meetings: Broker shall conduct five meetings with ACTA each year including a pre-proposal strategy meeting and a proposal presentation meeting. Each meeting after the first one shall be awarded one point: 1 meeting - zero points; 2 meetings - one point; 3 meetings - two points; 4 meetings - three points; and 5 meetings - four points.
2. Renewal applications: Broker shall provide ACTA with all pre-completed renewal applications by January 31 during each year the Agreement is in force. 4 points shall be awarded for Broker providing all renewal applications by January 31 and thereafter ACTA shall deduct one point for each two (2) full days Broker fails to provide ACTA with the pre-completed renewal applications. Renewal applications submitted during any two (2) day late period shall not result in a point deduction for that two (2) day period.
3. Proposal.: Each year Broker shall provide to ACTA a comprehensive renewal proposal at a meeting no less than ten (10) days before the policies annual renewal dates. Broker shall receive one point for each two (2) days prior to the ten (10) day proposal deadline as follows: one point for submittal twelve (12) days prior; two points for submittal fourteen (14) days prior; three points for submittal sixteen (16) days prior; and four points for submittal eighteen (18) days or more prior to the due date.
4. Premiums: Each year at renewal, Broker shall strive to reduce the total premium cost for comparable coverage by two percent (2%). One point shall be awarded for each half percentage reduction in total premium cost.
5. Policy Delivery: Broker shall deliver all policies no later than ninety (90) days after the renewal date for each policy and shall receive one point for each ten (10) days of early delivery after the renewal date; delivery within 40 days of renewal shall award four points; delivery within 50 days of renewal shall award three points; delivery within 60 days of renewal shall award two points; delivery within 70 days of renewal shall award one point; and delivery 71+ days after the renewal date shall award zero points.

ACTA and Broker agree that the foregoing evaluation process is based upon all of ACTA's insurance policies renewing at the same time. In the event that any insurance policy deviates from other policies with respect to renewal dates, ACTA shall have the right to assign the evaluation of Broker's performance to the insurance policy or policies of its choice for the purpose of determining what, if any, additional compensation is owed each year.

Each point shall be valued at Seven-Hundred-Fifty Dollars (\$750). Twenty (20) points shall be the maximum possible award for each evaluation period for a total additional compensation of up to Fifteen thousand dollars (\$15,000). After ACTA evaluates Broker's performance each year using the form attached hereto as Attachment B-1, Broker shall submit an invoice to ACTA in the amount based on the total score awarded by ACTA. ACTA will issue payment in 30 days after receiving an acceptable invoice.

III. **Additional Terms and Conditions Regarding Compensation**

Broker will not accept any commissions, including contingent commissions, in connection with the placement of ACTA's policies under this agreement. If policies cannot be issued net of commission or Broker cannot exclude ACTA's policies from any contingent commission agreement that Broker may have with insurance underwriters, ACTA hereby consents that Broker may bind policies and Broker will disclose to ACTA, upon the earlier of the date the policy is delivered to ACTA or thirty days after binding of the policy, any commissions, including, to the extent it may be estimated, any contingent commissions earned pursuant to this Agreement and credit those commissions, at the time applicable premiums are billed, against the annual fee paid hereunder, unless prohibited by law.

In circumstances where certain insurance products are not available in the retail insurance market, it may be beneficial to ACTA to include in the insurance transaction wholesale Brokers or other intermediaries who can make available specialized insurance products. If any such intermediary is used on ACTA's account, Broker will disclose to ACTA prior to the initial binding, if the information is known at the time of binding, or as soon after initial binding as practicable if the information is not known at the time of binding, the compensation that Broker (and its affiliate, if applicable) will receive and Broker's relationship with the intermediary. Additionally, upon request, Broker will provide a written explanation to ACTA why the intermediary was used.

**In the event an insurance policy is terminated prior to the end of any policy year, a pro rata portion of the compensation paid to Broker in this Agreement shall be returned to ACTA in the amount equivalent to the return of any premiums paid by ACTA for such cancelled policy.**

Transmittal 2

2019 Incumbent Real Estate Broker Proposal



Willis Towers Watson

**Willis Towers Watson**  
Response to Request for RFP

**Alameda Corridor  
Transportation Authority**

August 1, 2019



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## Appendix

- A. Service Team Biographies
- B. Insurance Verification

Bryan Fitzpatrick  
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Direct: +1 949-930-1781  
18101 Von Karman Avenue, Suite 600  
Irvine, CA 92612

August 1, 2019

Alameda Corridor Transportation Authority  
Attn: Phillip Le

**REF: Broker Insurance Services RFP 2760 Kilroy Airport Way, Suite 200 Long Beach, CA**

Dear Mr. Le:

Thank you for the opportunity to continue our partnership with Alameda Corridor Transportation Authority (ACTA) which began November of 2005. It has been our honor to provide broker services to ACTA. It has been our pleasure to work with Jim Preusch, Phillip Le and Janice Putname over our association with ACTA. We value our partnership enormously and look forward to continuing our relationship for years to come.

ACTA is a unique entity. The business and exposures are really one of a kind. Ultimately our strength is the time we invested to understand ACTA's needs and exposures. We then translated and shared our understanding of ACTA with the insurance community to develop best of class programs.

Throughout our partnership with ACTA we have never taken the easy road and rested on a static program. Each year we have looked to see if we can improve the program through premium efficiency, policy language improvement, or limit evaluation, to keep up with changes in exposures. We believe in continuous improvement and creating value for our clients.

The backbone of having a successful insurance program are the services that are provided by the broker to assure the best outcomes. Driving our success is the WTW service team assembled and the consistency of the team. It is a team unparalleled in experience, integrity and in providing value. Several of the team members including the Account Manager have been with ACTA since 2005. Nine out of the ten team members listed have over 20 years insurance experience.

We are very proud to note in the "Scope of work" outlined in the RFP request that we have consistently meet all of the requirements outlined. And will continue to do so. Also we are able to comply with the terms of the contract agreement attached in Appendix A.

We look forward to exploring any items outlined in this response with you. More than that, we look forward to serving ACTA as a valued client.

Sincerely,



Bryan Fitzpatrick,

Executive Vice President, Account Manager



## II. Firm and Personnel Qualifications and Experience

### ABOUT WILLIS TOWERS WATSON

**A strong client focus, an emphasis on teamwork, unwavering integrity, mutual respect and a constant striving for excellence are the values at the core of the new Willis Towers Watson's rich history.**

With roots dating to 1828, Willis Towers Watson has 39,000 employees in more than 120 territories. Willis Towers Watson (NASDAQ: WLTW), a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth.

### OUR STRUCTURE

**We are an integrated advisory, broking and solutions company organized around four business segments designed to meet our clients' risk and people needs.**

#### **CORPORATE RISK AND BROKING: Segment currently engaged with ACTA**

We know how companies can unlock potential through effective risk management. Our clients rely on us to craft strategies to quantify, mitigate and transfer risk, taking advantage of our specialist industry experience and unparalleled analytics and market know-how. The result is a new way of embracing risk that drives superior results. This philosophy is certainly borne out of the results that WTW has produced.

Details of our other segments, **(INVESTMENT, RISK AND REINSURANCE, HUMAN CAPITAL AND BENEFITS and EXCHANGE SOLUTIONS)** can be found on our website.

As an organization WTW has extensive experience with public agencies, municipalities, and transportation authorities. Throughout the organization we provide services to hundreds of entities from the public sector. It provides us with a deep resource pool of information to draw from to help provide services to ACTA. Below are several clients' examples:

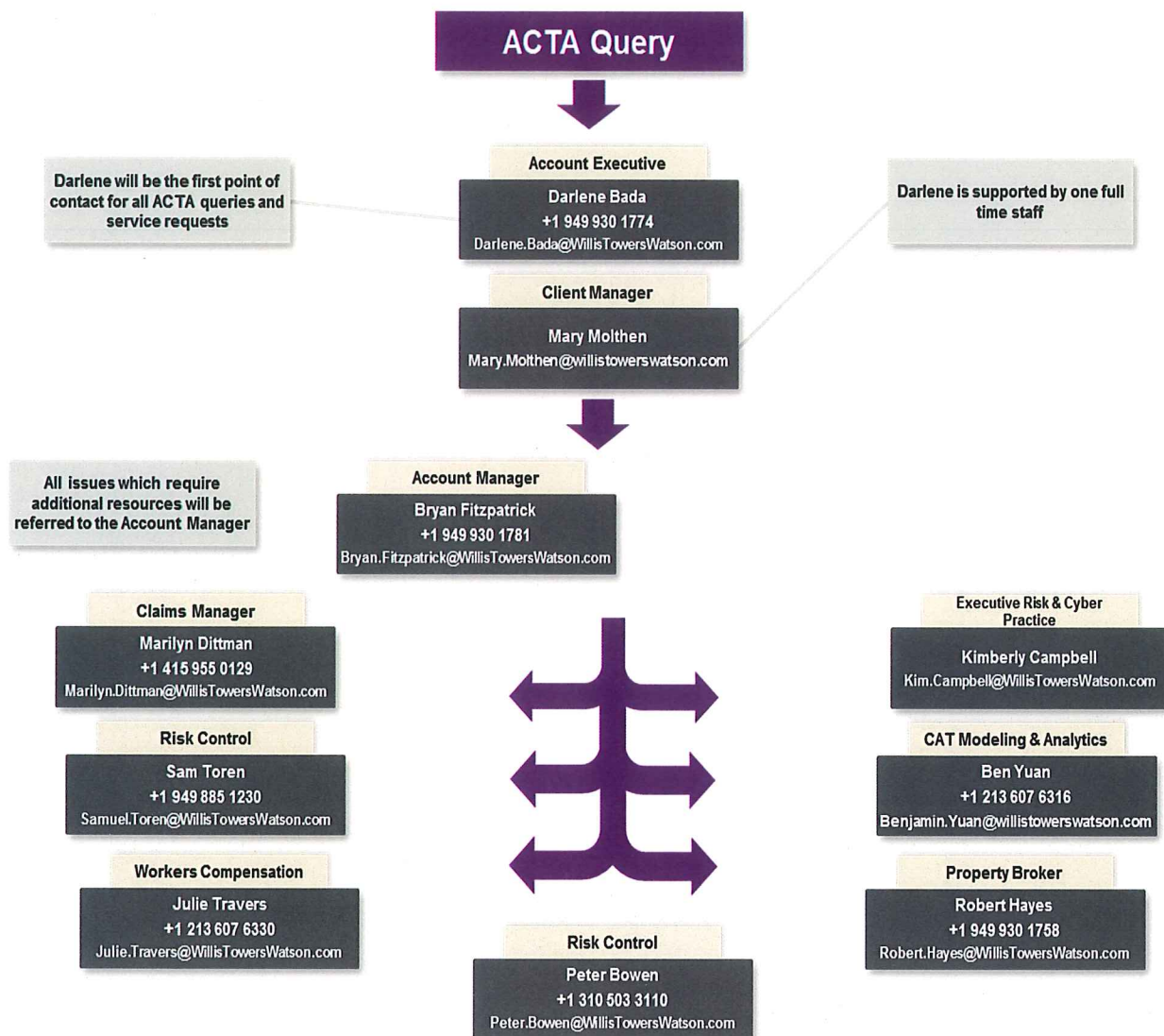
- Counties: Los Angeles, Kern
- Cities: Los Angeles, San Antonio, Pittsburgh, Newark, Austin
- States: Nevada, Maryland, Delaware
- Transportation: Alameda Corridor Transportation Authority, Mass Turnpike Authority, Mass Port Authority, Consolidated Rail Corporation (Conrail), Kansas City Southern Railroad, North Coast Railroad Authority, Port of Los Angeles Red Car Line, Angels Flight Railway, Patriot Rail

ACTA's current service team members have worked on significant accounts and complexity. Some of the noteworthy clients include County of Los Angeles, LA Community College District, Los Angeles County Office of Education, AmerisourceBergen, and Toyo Tires. Each of these clients have one thing that in common with ACTA which is very important, they all have large complex property values subject to catastrophic events i.e. earthquake, wind and flood. As ACTA knows their property exposure is their most significant risk and their largest premium that they have in their insurance portfolio.

The next page identifies ACTA's service team and communication flow chart.



## Service Goals – Communication Flow



WTW philosophy in providing services is based on a team approach. Each team is comprised of personnel with the technical expertise and resources within a specific line of coverage. On ACTA's team we have specialist in WC, Executive Risk, Railroad Liability and Property. The team is led by an Account Manager who is responsible for making sure ACTA is receiving all of the resources that WTW has to offer. Bryan has been involved with ACTA since 2005.

It is our technical strength lead by our specialists that allows us to provide outstanding solutions for our clients. With ACTA this is particularly important as respects to Property/DIC coverage as this coverage accounts for approximately 70% of ACTA's total insurance program. Bob Hayes is ACTA's property broker. He has over 30 years experience and has been on ACTA's team for 4 years.

Another important member of the team is the account executive position. On ACTA's team Darlene Bada is in this position and has been for 7 years. Darlene is responsible for the coordination of all the services and in many cases is the first contact for ACTA in any action items needed.

As outlined above Willis Towers Watson uses a team approach in order to provide the highest level of brokerage and risk management services to our clients. Each team is comprised of personnel with the technical expertise and resources to provide services in the most efficient and effective manner



possible. To effectively oversee and manage ACTA Risk Management program, Willis Towers Watson will dedicate an extensive team of insurance and risk management experts as depicted in the chart below:

| SERVICE TEAM MEMBER   | RESPONSIBILITIES  |
|---|---|
| <b>Bryan Fitzpatrick</b><br>Irvine, CA                          | <b>Account Manager</b><br>Overall responsibility for assuring all promised Willis Towers Watson services are delivered and commitments are met.<br>Keep ACTA abreast of insurance industry issues that could impact risk management and risk financing programs.<br>Continuously work to find new risk management / risk financing procedures to assist ACTA. Assist, support and guide ACTA in strategic planning. |
| <b>Darlene Bada</b><br>Irvine, CA                               | <b>Account Executive</b><br>Day to day responsibility for coordinating delivery of all promised Willis Towers Watson services.<br>First point of contact on Willis Towers Watson team for coverage questions. Will handle directly or in conjunction with other team members.<br>Support Advocate Partner in the placement and management of the Railroad Liability Coverage.                                       |
| <b>Bob Hayes</b><br>Irvine, CA                                  | <b>Property Broker</b><br>Property placement, marketing strategy, and program negotiation.  |
| <b>Mary Molthen</b><br>Irvine, CA                               | <b>Client Manager</b><br>Support Account Team with all aspects of account administration.<br>Track policy issuance and corrections.<br>Invoicing, payment tracking.<br>Certificates of insurance and Auto ID cards.   |
| <b>Kimberly Campbell</b><br>Irvine, CA                          | <b>Executive Risk &amp; Cyber Practice</b><br>Overall responsibility for assuring all promised Executive Risk (FINEX) services are delivered and commitments are met.   |
| <b>Ann Fraser</b><br>President, New World Ventures (Wholesaler) | <b>Outside Consultant for Railroad Liability</b><br>Accesses surplus lines market as needed and consults with Willis Towers Watson regarding program design. Responsible for the oversight of the safety services and recommendations of the carrier.   |
| <b>Marilyn Dittman</b><br>San Francisco, CA                     | <b>Property Claims Advocate</b><br>Claim reporting, coverage analysis, policy interpretation, strategies for claim submission, action plans and, ultimately, final settlement   |
| <b>Peter Bowen</b><br>Los Angeles, CA                           | <b>Loss Control</b><br>Peter acts as a technical resource to ACTA. Where carriers have gaps in their services, Peter will fill the gaps. He can also coordinate and deliver educational webinars for managers. His responsibilities include assisting customers with risk control and   |



| SERVICE TEAM MEMBER                            | RESPONSIBILITIES  |
|--|---|
|  | loss reduction solutions as well as keeping them apprised of industry and regulatory issues.  |
| <b>Ben Yuan</b><br><b>Los Angeles, CA</b>      | <b>Consultant, Technical Services</b><br>Performs CAT modeling as needed to support ACTA decision and marketing negotiations.   |
| <b>Sam Toren</b><br><b>Los Angeles, CA</b>     | <b>Property Risk Control Consultant</b><br>Serves as a technical resource to ACTA on loss control matters<br>Assists in review and coordination of loss control services provided by carriers as requested.   |
| <b>Julie Travers</b><br><b>Los Angeles, CA</b> | <b>Workers Compensation Claims Consultant</b><br>Develops and maintains well-coordinated WC claims management between the carrier, contractor, carrier adjusters, medical providers, WC defense attorneys, enrolled contractors, project managers, and other parties as needed. |

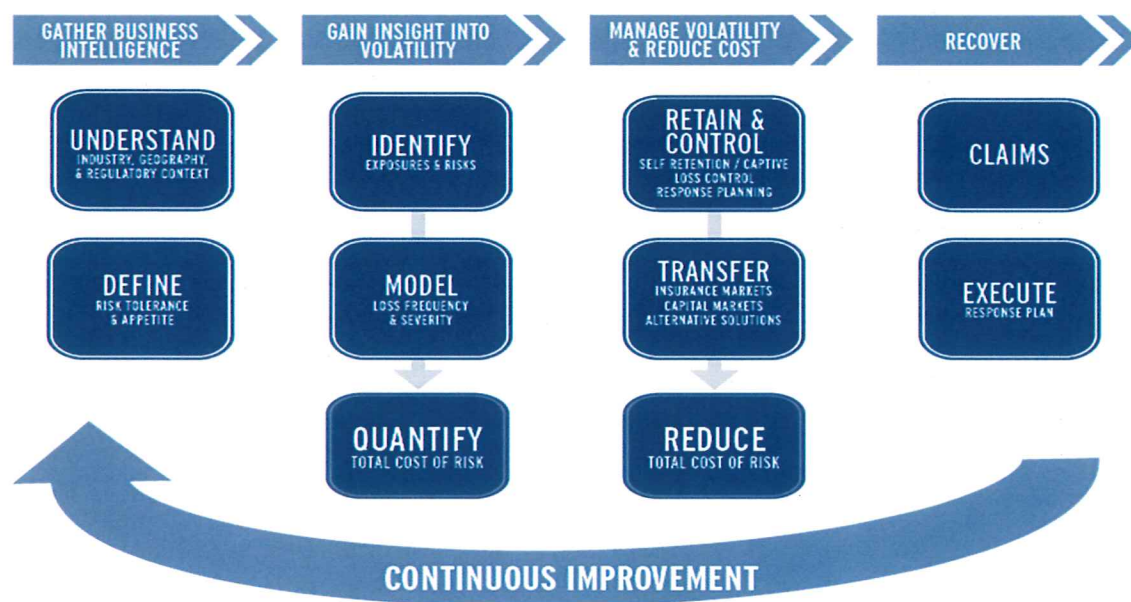
*Complete Service Team Biographies have been included in the Appendix.*

### III. Firm Resources

#### Willis “The Analytical Broker”

We have made a commitment to our clients to serve their needs through a proposition described as “the analytical broker.” This means clients will find our advice grounded in technical approaches, the language of finance, and enabled by the best analytics in the industry.

Our goal is to ensure our clients have more insight and can make better decisions about managing the risks in their organizations than ever before. In order to achieve this, we take the following approach:



Willis Towers Watson has a suite of analytical tools that we can discuss and utilize if ACTA so chooses. The two most applicable tools used thus far for ACTA are the PML study, which we effectively used for your 2019 Property renewal and Benchmarking Directors & Officers Liability which provided validity in increasing your limits purchased.

## BROKING PHILOSOPHY

Broking is at the core of what we do for our clients. How a risk is presented to the global marketplace is paramount. Every Willis Towers Watson service team includes seasoned Broking Specialists who know our clients and develop market strategies tailored to each client's profile and objectives. The specialists work with each individual client and others on the Willis Towers Watson team to develop a broking plan predicated on these principles:

- Every client deserves its own best deal.
- Each client should be differentiated from its peers, not homogenized in the marketplace.
- The broking process should not be a series of "hand-offs." Our brokers and service team's work together to deliver the most complete information possible to the marketplace. Underwriters respond very positively to our teams' hands-on knowledge of our clients.
- Our clients deserve the benefit of Willis Towers Watson's collective, global market intelligence, coverage expertise and strong market relationships. This is accomplished through our broking organization that connects all of our broking specialists regionally, nationally and globally.
- Our brokers employ state-of-the-art modelling techniques that use each client's own data, combined with our significant portfolio data, to help design an optimal program with respect to self-insured retention levels, limits, claims administration and so on. An example of a modelling technique for ACTA is our use of Earthquake modelling.
- When program design consensus is reached, Willis Towers Watson prepares professional underwriting submissions for presentation to the marketplace. Because our broking teams are in the insurance marketplace every day and know the underwriting community thoroughly, we know



how to prepare submissions that address the salient underwriting issues. This ensures that our submissions get proper and prompt attention. All submissions can be shared with the client.

- Insurance is a business of trust and we strongly encourage our clients to meet personally with their potential underwriters. Such meetings offer the best forum for fully exploring options, discussing complex or difficult issues and most importantly, building trust between the two parties. We have arranged several conference calls with underwriters and ACTA. In addition we coordinated company engineers to visit the corridor.
- We negotiate terms and conditions, keeping our client fully informed via regular updates and recommendations. . Our recommendations regarding carriers will comply with Willis Towers Watson's corporate security standards and will reflect our opinion as to both the long and short-term advantages/benefits (as well as disadvantages, if any) of the recommended program.
- Upon receipt of the client's instructions, Willis Towers Watson binds coverage with the selected carriers and provides written confirmation to the client prior to inception.

## CARRIER SELECTION

As part of our program design and carrier selection process, we always look for carriers who we believe are the most appropriate for our clients' needs *regardless of where the carrier may be domiciled*. Some of the criteria we discuss with our clients when recommending carriers include:

- **PRICING AGGRESSIVENESS:** Some carriers are known to be more aggressive in pricing their products. We seek to achieve the most cost-efficient program consistent with the requisite breadth of coverage.
- **SERVICING CAPABILITIES:** Selected carriers must have the appropriate infrastructure and quality standards to serve our client's operations, wherever they may be.
- **RISK APPETITE:** Carriers' risk appetites vary depending upon their attachment level, and we must match their philosophy with our client's desire and ability to retain risk.
- **CARRIERS' STRATEGIC PLAN:** Underwriters often revamp their approach to risk due to evolving internal goals. We can sometimes obtain advantages when a carrier becomes more competitive, achieving better coverage, limits and/or pricing than would normally be available. Critical changes in carrier personnel can also affect their tactics – the move of a significant individual from one carrier to another can materially and sometimes rapidly alter a situation.
- **FINANCIAL STABILITY:** Insurance is a promise to pay. In some cases that promise does not come due until years after the coverage is bound. Therefore, we strictly adhere to our process for evaluating the financial stability of carriers, described later in this document.

Overall Willis Towers Watson looks to individual underwriters who have an expertise in the industry or who has a personal relationship with the client. We do not have borders or quotas to fill in the various underwriting centers. We have the ability, working with the client, to decide what office and what underwriter is the best fit for that specific deal.

- **PLACEMENT PROTOCOLS:** Jointly with our clients we will determine how the selected carriers will be approached and agree upon a broking plan. With our clients' approval, Willis Towers

Watson may seek to maximize our clients' position by providing the incumbent market and/or competing markets with target pricing, details of the expiring program, identification of competing markets, opportunities to re-quote, and a "last look" re-quote opportunity for the incumbent or other market.

## **WILLIS RESEARCH NETWORK (WRN)**

WRN, led and sponsored by Willis Towers Watson, was formed in 2006 and has become the world's largest collaboration between public science and the financial sector. Approximately 50 of the world's leading scientific research institutions are members of WRN and their activities are united by a common aim: improving resilience by enabling the risk and (re)insurance sector to integrate cutting-edge science and information into its decision making and operational systems across public and private institutions.

## **WILLIS MARKET SECURITY GROUP (WILLIS MSG)**

The Willis Market Security Group (MSG), one of the first such teams to be established in the London market, has a proven history of supporting the needs of clients around the world. It is responsible for the independent monitoring of more than 2600 insurance and reinsurance carriers, in addition to third-party intermediaries used by the Willis Towers Watson Group worldwide.

Willis Towers Watson MSG consists of 22 professionals in the U.K., supported by a dedicated team of 20 in Mumbai, India. The primary analytical, business support and client service support teams are based in Ipswich, U.K. Analysts are trained in a range of disciplines, including financial and management accounting, insurance, insolvency and general research. Analysts each have specialist responsibilities, which may be allocated by business sector, geography or ownership. For example, the team includes analysts with particular experience with respect to Lloyd's of London.

## **CLAIMS MANAGEMENT SERVICES**

An insurance program is only as good as its ability to respond when a loss has occurred. An effective claims management program that includes both pre-loss and post-loss strategies is one of the most important elements of an effective risk management program. Our claim specialists are there for ACTA every step of the way from reporting, to specific strategies in presenting documentation, to final negotiation of the claim. Our goal is to get the claim paid quickly and fairly.

This section outlines the claim advocacy capabilities that are available to ACTA under our base compensation arrangement.

## **CLAIMS CORE RESPONSIBILITIES**

- Willis Towers Watson will assist in the development / review of insurance carrier "special account handling instructions" to enhance the level of services provided by the insurance carrier(s). We will also assist in establishing internal procedures and responsibilities.
- Willis Towers Watson will provide notification to insurers of all claims (including excess if necessary) other than workers' compensation claims and auto claims. ACTA will report workers' compensation and auto claims directly to the carrier. Willis Towers Watson will provide assistance, consultation and guidance in preparation and submission of claim documents, payment follow-up and subrogation recoveries.
- Willis Towers Watson will act as a liaison between ACTA and its insurers to advocate resolution of claims related issues and coverage disputes.



- Willis Towers Watson will provide specialized claims advocacy on all Executive Risk claims.

## **RISK MANAGEMENT, LOSS CONTROL SERVICES AND PROPERTY**

Willis Towers Watson loss control services group offers a broad spectrum of services. Our loss control service team is organized by a team of regional consultants. They are supported by national product line and industry experts whose responsibility is to drive best practices, product enhancement, training and development. ACTA's need for loss control services is limited due to the nature of the business. There are minimum Workers Compensations safety issues due to the majority of payroll being subject to an office exposure. There has been little to no losses in the workers compensation program. But if the need arises we will assign a specialist.

The largest exposure is the corridor property. ACTA has engineers that are very cognizant of every mile of the track and bridges. They constantly do maintenance and inspections. If at anytime we have an inepections from an insurance company that needs interpretation or correction we will get our specialists involved. Also if at anytime ACTA wants a second opinon on the corridor property condition we will assign a specialist.

- 93 risk consultants in North America
- 230 risk consultants worldwide
- An ergonomics practice
- National team of complex property experts
- Specialized and dedicated claim experts in environmental accidents
- Willis Towers Watson currently provides dedicated property and casualty safety and claims consultants (see team chart and biographies) to ACTA

## **Risk Management Information Systems (RMIS)**

WTW has a robust RMIS system called DataWize. It is a single cloud computing platform that has revolutionized the modern computing paradigm. While this system is scalable to the most demanding global client it can be configured to the needs of medium sized companies.

Because of ACTA's structure the need for a robust RIMS system is a bit counterproductive. There is a cost to RMIS systems and the need balanced by the cost would not seem to be beneficial for ACTA. What is needed for ACTA is to make sure the insurance company loss runs are current and accurate. In addition all underwriting information is updated especially the property schedule for ACTA. These tasks are now being done and tracked by our team. We also have another alternative to tracking information and that is through our Willis online web-based platform. This platform can be used for ACTA as outlined below:

## **Technology Solutions – Risk Intelligence Central**

Risk Intelligence Central (RIC) is our step towards delivering our vision of a market-leading risk management product using the latest technology to provide our clients with a one-stop digital experience so you can make more informed decisions.

RIC connects multiple parties by bringing them together into a single environment. This gives users a location to share documents, schedule meetings, manage key contacts at each location and function, and create and assign tasks.

It also combines easy-to-use collaboration and insight applications with the most commonly used Risk Management Information System (RMIS) functionality to streamline your day-to-day needs. We achieve excellence by investing in the latest RMIS technology available from providers in this market, combined with our own in-house development efforts.

#### **Delivering: One place, many solutions**

The core of the Technology Solution offer is:

A secure website

Quick and easy access

Communication and collaboration tools

Solutions to meet your needs

The essence of any successful risk intelligence tool is comprehensive, accurate and timely information. The way in which such information is communicated is crucial. Our technology addresses this in a number of ways:

The RIC platform comprises a number of applications that will be delivered in stages. The collaboration application, Risk Intelligence Link is live and currently available to our clients in 23 countries, with efforts to expand underway. See our vision video here: <https://www.willistowerswatson.com/RiskIntelligenceCentral>

## **Distinguishing through creating value**

WTW is very proud of the value that we have created for ACTA over the years. It started our first year of placing ACTA's program, 2006. The incumbent property underwriter at that time did not have an appreciation for the risk the Corridor represented. The underwriter referred to ACTA as a tunnel exposure. To correct this misconception we had major underwriters to understand actually inspect the corridor. With the proper knowledge in hand we were able to produce a property premium savings of 37% or **\$485,000** our first year. Besides the premium reduction we expanded the terms and conditions of the coverage. In addition we actively marketed the railroad liability and reduced that premium by **\$113,399** again over a 30% decrease.

As example of continuous improvement of ACTA's insurance program in 2016 we convinced the property underwriter to use mile posts at demarcation to create values exposed to risk, especially earthquake. We supported this method by having our analyst prepare a probable maximum loss scenario using the mile posts and successfully reduced the values exposed to an event. After several conversation with our analyst, Bob Hayes, and the insurance companies we convinced them of the logic behind the method. The result was a 27% or a \$309,000 premium reduction.

The following chart shows the value WTW has created since 2005.

- Added \$20M EM and \$25M FL limits since 2005
- Increased sublimits on bridges by \$25M since 2005
- Terms and conditions improved on all major lines
- ACTA's premium is 26% less in 2016 than 2005 despite major increases in revenue and values and the coverage/limit improvements
- Corridor Property rate effectively decreased by 52% since 2005



|                           | 2005             | 2019             | % Change     |
|---------------------------|------------------|------------------|--------------|
| Revenues                  | 69,000,000       | 115,000,000      | 65%          |
| Corridor Property Values  | 1,047,022,000    | 1,426,994,358    | 36%          |
| Corridor Property Premium | 1,310,836        | 1,028,750        | (21%)        |
| <b>Premium All Lines</b>  | <b>1,744,943</b> | <b>1,291,428</b> | <b>(26%)</b> |

## IV. References

All referenced accounts are handled by one or more team members assigned to ACTA

| <b>BUSINESS NAME</b>                         | <b>C.J. Segerstrom &amp; Sons</b>  |
|--|--|
| Contact Name and Title                       | Arpi Rubenyan, Risk Manager  |
| Contact Phone                                | +1 714 438 3277  |
| Contact Email                                | <a href="mailto:RubenyanA@southcoastplaza.com">RubenyanA@southcoastplaza.com</a> |
| WTW individual performing Described Services | Bob Hayes is the current broker placing property coverage                        |
| Date of Services                             | March 2012 to present  |

| <b>BUSINESS NAME</b>                         | <b>Adobe Systems</b>   |
|--|--|
| Contact Name and Title                       | Marina Acosta, Senior Director, Insurance & Risk Management            |
| Contact Phone                                | +1 714 397 6876  |
| Contact Email                                | <a href="mailto:Marina.acosta@davita.com">Marina.acosta@davita.com</a> |
| WTW individual performing Described Services | Bob Hayes is the current broker placing property coverage              |
| Date of Services                             | June 2013 to present   |

| <b>BUSINESS NAME</b>                         | <b>Cohen Brothers Realty Corporation</b>  |
|--|---|
| Contact Name and Title                       | Steve Romine, Romine Consulting   |
| Contact Phone                                | +1 310 413 2400   |
| Contact Email                                | <a href="mailto:Romineconsulting@sbcglobal.net">Romineconsulting@sbcglobal.net</a>  |
| WTW individual performing Described Services | Bob Hayes is the current broker placing property coverage. Darlene Bada is the Account Executive responsible for servicing property, auto and nine other ancillary lines of coverage. Bryan Fitzpatrick is the Account Manager responsibility for assuring all promised Willis Towers Watson services are delivered and commitments are met and assists, supports and guides in strategic planning. |

|  |   |
|--|---|
| <b>BUSINESS NAME</b>                         | <b>Cohen Brothers Realty Corporation</b>  |
| Date of Services                             | March 2014 - present  |
| <b>BUSINESS NAME</b>                         | <b>The Salvation Army</b>   |
| Contact Name and Title                       | Major Michael Dossey, Territorial Risk Management Secretary   |
| Contact Phone                                | 1 562 481 8308  |
| Contact Email                                | <a href="mailto:Michael.dossey@usw.salvationarmy.org">Michael.dossey@usw.salvationarmy.org</a>  |
| WTW individual performing Described Services | Kim Campbell is the current broker placing Executive Liability coverage.  |
| Date of Services                             | June 2016 – Present   |
| <b>BUSINESS NAME</b>                         | <b>HCP, Inc.</b>  |
| Contact Name and Title                       | Jonathan Bredehoft, Director - Risk Management  |
| Contact Phone                                | +1 949 407 0388   |
| Contact Email                                | <a href="mailto:jbredehoft@HCPI.com">jbredehoft@HCPI.com</a>  |
| WTW individual performing Described Services | Darlene Bada is the Account Executive responsible for servicing a large liability placement consisting of a tower of eighteen policies. Bryan Fitzpatrick is the Account Manager assuring commitments are met and assists, supports and guides in strategic planning. |
| Date of Services                             | July 2011 - Present   |

#### Account Manager References

|                        |  |
|------------------------|--|
| <b>BUSINESS NAME</b>   | <b>County of Los Angeles</b>   |
| Contact Name and Title | Steve Robles, Risk Manager   |
| Contact Phone          | +1 213 351 5346  |
| Contact Email          | <a href="mailto:SRobles@ceo.lacounty.gov">SRobles@ceo.lacounty.gov</a>               |
| Date of Service        | January 2007 to present  |
| <b>BUSINESS NAME</b>   | <b>Alameda Corridor Transportation Authority</b>                                     |
| Contact Name and Title | James P Preusch, CFO   |
| Contact Phone          | +1 562 247 7080  |
| Contact Email          | <a href="mailto:jpreusch@acta.org">jpreusch@acta.org</a>                             |
| Date of Service        | October 2005   |
| <b>BUSINESS NAME</b>   | <b>AmerisourceBergen</b>   |
| Contact Name and Title | Martin Smith, Director, Risk Management  |
| Contact Phone          | +1 610 727 7479  |
| Contact Email          | <a href="mailto:MartSmith@amerisourcebergen.com">MartSmith@amerisourcebergen.com</a> |
| Date of Service        | January 2000 to present  |

## V.Services to Be Provided

Our Client Advocate Business Model is an important difference between Willis Towers Watson and our competitors. It is about understanding ACTA's unique needs and developing innovative solutions



so that you can focus on what matters most. It means proactively delivering Willis Towers Watson' intellectual capability to ACTA through consultation and advice. You can expect the following from your Account Manager and Willis Towers Watson:

- One person to coordinate all resources and galvanize the team into action
- Find and use the best resources regardless of where they are located in a true spirit of collaboration
- Knowledge of your industry and company
- Strong advocacy on claims seeking and achieving prompt and fair settlements
- Detailed knowledge of coverage including the nuances of coverage
- A true partnership with clearly defined responsibilities and measureable performance
- Use market leverage on ACTA's behalf to get the best in coverage terms, conditions, pricing and claim resolution
- Full transparency on all income earned
- This model drives our marketing, account management and service delivery process.

## SERVICE PLAN

To initiate an overall working relationship between ACTA and Willis Towers Watson, we recommend continuing to use the annual pre-renewal meeting which we have followed every year to establish an operating service plan. This includes the structure for account service activities and the maintenance of day-to-day controls. The plan also includes activities expected during the annual service period including:

**Exposure Analysis:** review and assessment of the changing word in which ACTA operates and its impact on the risk management program

**State of the Market Analysis:** Our practice leaders and marketing specialists provide ACTA with regular assessments of current market trends along with our prognosis for the future and information about other key items of interest such as new products, new facilities, personnel changes, large losses, significant legislative and regulatory activity, and other significant drivers of business performance.

**Meetings with Key Underwriters/Markets:** We encourage your participation in these meetings as a means to strengthen ACTA's relationship with the insurers/risk vendors.

**Annual Client Advocacy Report:** the purpose of the Client Advocacy Report is to objectively assess activities over the past year, and looking to the coming year, formulate strategy, set goals, and identify needed services for all lines of coverage handled by Willis Towers Watson.

**Pre-Renewal Meeting:** our policy is to meet with clients 120 days prior to any renewal date to review strategies and specifics. This will afford an opportunity to assess each proposal, as well as ample time for implementation.

**Policy Servicing Activities:** making sure coverage is bound, policies are checked and issuing certificates and other key servicing tasks are handled in a timely manner.

**Benchmarking:** The team provides benchmarking information and analysis using industry studies and internal Willis Towers Watson resources in order to assist clients in evaluating their risk costs and performance relative to selected peer groups.

**Claim/Engineering Strategies:** on a regular basis, we meet with your key claim personnel to assess accomplishments during the past quarter and set goals for the next three to six months.

**Peer Review Process:** We have a formal property/casualty peer review process. Willis Towers Watson professionals from all around the country, including brokers, claims advocates, and product team leaders, convene to ensure a well-rounded review of our major accounts. Each team has assigned accounts and areas reviewed include policy language, program structure, pricing, and retention. After the review, findings and alternatives are presented to the client team for action.

**Certificate and Auto ID Cards Center:** the Willis Towers Watson Global Certificate Center is responsible for processing requests for certificates of insurance and auto ID cards for Willis Towers Watson clients. We process annually over 3.4 million certificates and auto ID cards for renewals, new accounts and midterm requests.

In addition, the Willis Towers Watson Excellence Model (WEM) is our process framework which identifies the steps and quality control standards we follow to serve our clients' best interests.

For each client renewal, process milestones must be met as respects renewal strategy, submissions, marketing/delivering quotes and confirmation of binding. In addition to our WEM process framework, Willis Towers Watson will comply with broker service requirements developed by each client, including required service milestones and other specific deliverables relating to brokerage services. Central to our broking philosophy, the objectives of WEM include:

1. Ensuring you get what you want
2. Documenting and standardizing the placement process

## VI. Conceptual Approach

### ACTA/Corridor Property

#### STRATEGY/MAJOR CONSIDERATIONS

##### 1. Demystify the Risk

The first priority in marketing the property coverage is to de-mystify the risk. ACTA is a unique operation; not one that most underwriters typically have much understanding for. Our job as broker is to clarify to the markets exactly what their exposure to loss is if they underwrite ACTA. The best way to do that is to have the interested insurers meet face to face with those who can best tell the ACTA story, who live the experience every day, the ACTA personnel. We believe the ACTA finance and engineering personnel would be best to review with the insurers the more critical information, i.e., operations, the risk management measures, the structures, etc. For those insurers still interested, we would plan a tour of the facility. When underwriters come to the realization that the property is virtually 100% noncombustible, has a substantial spread of risk, practically no flood exposure, etc, they will be more comfortable and thus more aggressive.

##### 2. Tailor the Underwriting Information

Since, as we've mentioned, ACTA is unique, special attention needs to be given to tailoring the standard underwriting information to represent the exposure in the best light. As an example:

Earthquake: The process of underwriting earthquake insurance today involves to a large extent, analyzing the results of the earthquake computer modeling which produces maximum loss scenarios. A specific type of spreadsheet is required to be filled out to carefully in order get the appropriate outcome. With the ACTA "trench work" representing almost 75% of the property damage exposure, it is critical that it is not entered as if it was concentrated in one place. Our



modeling experts have spread the values along the 10 mile posts in that critical spreadsheet, dramatically lowering the concentration thus reducing the loss forecast by approximately 25%. We have met with the current ACTA insurer, AIG, and discussed this approach with their underwriter and modeling team. After a thorough review, they agreed that this approach was reasonable and consequently significantly reduced the earthquake portion of the policy's premium. AIG has also toured the trench.

Another example of tailoring information, involved working to convince AIG that ACTA should not be categorized as a "tunnel" exposure on the modeling spreadsheet. This helped considerably in their earthquake rating process. Attention to these kinds of details are necessary to properly represent ACTA.

### **3. Market Conditions.**

There is a clear trend across the property insurance markets that most insurers are taking steps to return to underwriting profitability. We have seen price firming almost universally and we expect that will continue for the next 6-12 months. While capital is plentiful, property insurers are demonstrating their long sought after pricing discipline.

With the emergence of this underwriting discipline, the process we have outlined previously which involves close communication between ACTA personnel, potential insurers and WTW, to clarify the ACTA unique risk dynamics should produce the best results. This communication, where ACTA is given the opportunity to tell their story directly, should produce the in-depth underwriting information that a disciplined marketplace requires.

#### **Risk Financing Options.**

The traditional approach which ACTA has now, with one insurer, providing 100% of the coverage has proven to be the most cost effective over the years. We anticipate that option will continue to be offered and competitive. Minor variations to that approach, such as a "quota-share" program when two or more insurers share the risk also exists will also be available. With ACTA's \$1,000,000 all risks deductible and large earthquake deductible, it is possible that a deductible buy-back would be available to reduce ACTA's risk.

Alternative risk approaches include "parametric-trigger" policies can also be explored. They are becoming slightly more competitive for individual insureds and that approach may be attractive to ACTA. The down side to these programs is that they don't indemnify ACTA's specific physical damage loss but pay out based on the occurrence of a triggering event, typically a catastrophic event.

#### **Rate Guarantees/Broad Terms and Conditions**

These are best terms are obtained when competition is fostered. When insurers believe that they have a competitor involved, they are motivated. Also, broad terms are produced when a broker does the painstaking work of reviewing all the insurers conditions and asking hard questions concerning areas where coverage is limited.

WTW provides an All Risk policy form (WAR) that we promote within the market for our clients. The WAR form is broader coverage that exists in a typical insurer form. However, its often difficult to obtain agreement for its use, especially in a program being underwritten by a one insurer.

Rate guarantees have tended to fade from this hardening market however, if we are able to create an atmosphere with insurers bidding against each other, a rate guarantee is possible.

## LIST OF MARKETS-Corridor Program

The following insurers would be approached for quoting the corridor program. Of this group, besides ACTA's incumbent AIG, Allianz has shown the most interest in underwriting the account. All of these markets are chose because they fit the criteria that we look for in a potential business partner for our clients:

### Financial Strength

#### Long Term Commitment to the market

#### Qualified Engineering Staff

AIG  
Berkshire Hathaway  
Endurance/Sompo  
FM Global  
Ironshore  
London  
Swiss Re  
AXA XL

### Underwriting Expertise

#### Strong Claims Handling Reputation

#### Solid Relationship with WTW

Allianz  
CNA  
Everest  
Hartford  
Liberty Mutual  
Starr  
Travelers  
Zurich

## Parametric Trigger Markets

These are all insurers that we have used at one time or another to provide a parametric trigger program. The Criteria for choice is very close to the above Corridor program list. However, they must show a clear underwriting understanding of the unique aspects of this type of unique product.

|              |                    |
|--------------|--------------------|
| AIG          | Allianz            |
| AXA XL       | Berkshire Hathaway |
| Decartes     | Munich Re          |
| New Paradigm | Sompo              |
| Swiss Re     |                    |

## DIC (Wholesale) Market

The list of DIC markets is quite voluminous, with about 35-40 insurers underwriting in the area. WTW can access all of the insurers that meet ACTA's needs.

## LIST OF MARKETS-Railroad Liability

- |                        |                            |
|------------------------|----------------------------|
| ■ AXAXL (Incumbent)    | ■ Arch Specialty           |
| ■ Zurich North America | ■ Lexington Insurance      |
| ■ Westchester/Chubb    | ■ Ironshore/Liberty Mutual |
| ■ Aspen Specialty      |                            |

The above list comprises all domestic Railroad Liability markets currently entertaining Railroad Liability meeting ACTA's limits, attachment and premium requirements. International markets have



higher minimum premium and attachment requirements than afforded by ACTA's current Railroad Liability policy.

### **Market Conditions – Railroad Liability**

The Railroad Liability market is a niche market consisting of a relatively small number of players (see list above), the majority of whom have been writing this type of business for at least five years or more.

The entrance into the market by a new player can cause rates to fall, and the exit of an existing long term player can cause rates to increase. As a Railroad Specialist, we keep an ear to the ground for rumblings of new markets and withdrawal of old ones, but there's no sign of this presently.

In addition, a single, high profile catastrophic railroad loss can cause market capacity to contract and rates to rise, but we haven't seen a loss of this type since the Lac-Megantic, Quebec derailment in 2013.

Presently, rates are rising by an average of about 5%. Underwriters are putting up lower limits, generally \$5,000,000 - \$10,000,000, although the incumbent insurer, AXAXL, has not given us any indication that they wish to pull back from the \$25 million limit they are currently providing to ACTA. AXAXL continues to be one of the most consistent markets when it comes to large limits at reasonable rates on the larger domestic rail accounts.

Our goal at each renewal is to keep downward pressure on the rate, and maintain the limits and broad coverage that is provided by the current policy.

We submit ACTA's liability program to each of the above markets at every renewal. The consensus response over the last few years is that the Insured's current coverage with AXAXL is very aggressive with respect to rate, coverage and limits afforded.

## **Financial and Executive Liability (FINEX)**

The Willis Towers Watson FINEX Practice is a global resource with over 500 dedicated specialists. This group is built around the delivery of high quality solutions that keep pace with an environment where rapid change and continually emerging risk exposures are the norm.

The FINEX team for Alameda Corridor Transportation Authority includes specialists in Los Angeles, Austin and San Francisco based on their deep experience and expertise with governmental entities.

### **Claims and legal group (CLG)**

Addressing the substantial stakes associated with financial, executive and professional claims, CLG brings dedicated claims expertise to the FINEX client service platform. CLG consists of attorneys who have handled complex claims and coverage issues for an average of 18 years. CLG works closely with the broking, industry and product leaders to recognize claim trends, identify potentially restrictive policy terms and conditions, and assist in crafting policy language that meets our clients' specialized needs

### **Thought and product leadership (TPL)**

We provide our clients relevant news, information and corresponding advice regarding legal trends and market conditions. Through blogs, podcasts, webinars, publications, seminars, and client roundtable meetings, we communicate our expertise on emerging risks and corresponding coverage

issues. Our TPL team also negotiates directly with the product leaders at all leading FINEX insurers to ensure that broad, customized wording is available for our clients.

## Executive Liability (FINEX)

### Proposed strategy for ACTA's FINEX lines

To ensure optimal timing and renewal results, we typically aim to arrange a renewal strategy meeting approximately 120 days before renewal. Our renewal strategy is based on the following criteria:

**Risk profile:** we use our Risk Profile Analysis to evaluate ACTA strengths and potential areas of underwriting concern in order to anticipate the potential questions and concerns of the markets. We will discuss these findings with ACTA at the renewal strategy meeting to develop a strategic approach to address these risks at the underwriting meetings

**Policy peer review process:** as part of the renewal process, we will work with ACTA to ensure that your interests are aligned with your executive risk programs.

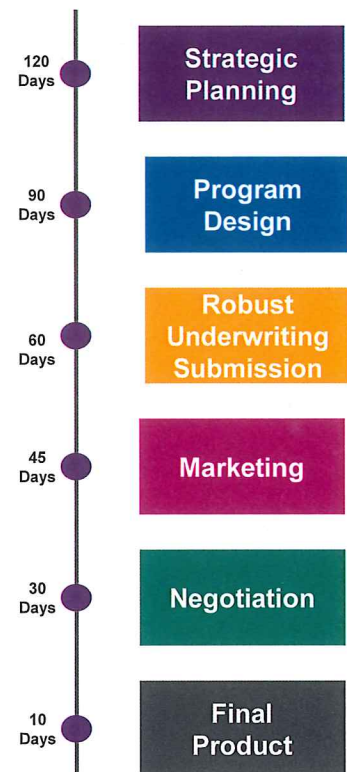
**Loss modelling and benchmarking:** we will prepare updated loss modelling and benchmarking reports for each line of coverage so that you can evaluate the limits you purchase against your unique exposures and developing legal trends.

**Developing program alternatives:** we will assess and present options for introducing new capacity, new program structures and the associated cost-benefit analysis. We will suggest program improvements and expanded coverage.

**Marketplace trends:** this includes an overview of the current executive risk market including claims and legal trends, coverage and pricing trends and carrier and product developments

**Specialized FINEX analytics and benchmarking:** To provide you the ability to make informed program structure decisions that are based on quantitative analysis we offer a suite of proprietary analytical tools. ACTA will receive the benefit of our analytics on an annual basis and with them the confidence that your programs are capital efficient expenditures with respect to EPL, Wage and Hour and non-profit management liability loss potential.

**Benchmarking:** while our analytics are certainly a differentiator in terms of tools to help determine the adequacy of limits, we realize that clients and other policy stakeholders still like to see traditional peer benchmarking.



## Executive Liability (FINEX)

### FINEX Market Conditions

#### Directors & Officers

**Rate predictions flat to +15%. Few placements will receive pricing reductions.**



- Private and not-for-profit companies: Financial health and industry matter. Financially distressed firms, companies in volatile or emerging industries and firms that have anti-trust exposures will likely continue to see premium increases, higher retentions and/or coverage restrictions.
- Excess: The high cost of defending claims is, now more than ever, putting lower excess D&O insurers “in the burn layer.” Pricing for lower excess is seeing more pressure than last year. We expect continued upward rate pressure from incumbent, low-excess insurers.

### Employment Practices Liability

**Rate predictions +5% to +10%.** California exposure is becoming more difficult to underwrite.

- Increased employee-friendly legislation and a plaintiff-friendly judicial system continue to make California a landmine field when it comes to EPL exposures. Carriers that are continuing to underwrite California exposures are treading carefully. Other carriers have increased retentions for California exposures and some have pulled out altogether.
- U.S. companies may have to start reporting pay data.
- The #MeToo movement has evolved into employee activism.

### Errors and Omissions

**Rate predictions: +5% to +10%.**

- Traditional E&O market capacity continues to erode as carriers focus on underwriting pure cyber risk.
- We expect modest price increases for clients with significant professional services offerings.
- Insureds should review their E&O exposure and existing coverage as part of their strategy to address growing cyber exposures.
- Carriers are growing increasingly sophisticated in their underwriting.

### Fidelity/Crime

**Rate predictions: Flat to +5%.**

- Social engineering and impersonation fraud continue to plague the fidelity and crime market. Court decisions in Medidata Solutions, Inc. v. Federal Insurance Company and Am. Tooling Center, Inc. v. Travelers Cas. & Surety Co. have caused the market to take a step back and pause to consider policy wordings. **In both cases, the computer fraud insuring agreement, previously viewed as limiting coverage to hacking events as opposed to an insider being duped, was broad enough to provide coverage for losses involving social engineering incidents.** The market has reacted, and leading carriers are amending policy language to specify that the computer fraud insuring clause is not intended to cover social engineering schemes.
- Due to the potential intersection of coverage between fidelity/crime policies and cyber, kidnap & ransom policies, organizations are looking to their brokers to evaluate their exposure and determine which policies are most likely to apply. Carriers are starting to impose restrictive language to specify which policy should respond.

## Executive Liability (FINEX)

### FINEX Markets for Renewal

|                 |                    |
|-----------------|--------------------|
| AIG             | The Hartford       |
| Allianz         | Markel             |
| Arch            | Nationwide         |
| Argo Pro        | Navigators         |
| Axis            | Old Republic       |
| Beazley         | Starr              |
| Berkley         | Swiss Re           |
| *Chubb          | Travelers          |
| C N A           | *XL Indian Harbor  |
| Everest         | Zurich             |
| *Great American | *incumbent markets |

**FINMAR** A separate business unit within the Willis Towers Watson Group, FINMAR Market Services, provides a wide range of services direct to certain insurers that place business for FINEX Global clients. A separate fee is paid to FINMAR Market services by insurers for the delivery of these services to them. This fee is calculated within a range of 2.75% and 7.5% (plus VAT, if applicable) of the overall premiums placed depending on the scale of services provided. Unless otherwise stated, premiums paid by the clients of FINEX Global will not be increased as a result of these arrangements.

#### **Additional Suggested Markets:**

|                    |              |           |       |
|--------------------|--------------|-----------|-------|
| Allied World       | Lloyd's      | HCC       | RLI   |
| Berkshire Hathaway | Philadelphia | Hudson    | RSUI  |
| Hanover            | QBE          | Ironshore | Sompo |

## **VII. Proposed Compensation**

We are flexible about how we are paid in terms of commissions versus fees or a combination of the two.

Our organization is structured to provide access to a wide variety of resources, designed to meet your most pressing business needs as they come up. It is an agile model that allows us to provide what you need when you need it.

Our Global Policy Manual, How We Get Paid document, WEM processes, Standard Terms and Conditions, Fee Agreements and Terms of Business Agreements have all been revised to reflect our ability to accept all forms of carrier compensation while providing full transparency to our clients.

The following fee structure is fully transparent and is the total compensation we will earn for each plan proposed. We do not allow any conflicts of interest get in the way of our role as ACTA's insurance broker. WTW embraces a model of complete transparency as it relates to compensation received for our services. Full disclosure of sources of income to WTW is required protocol. Not only do we divulge all details regarding how we service every account for coverage being offered, we also provide full details regarding our proposed compensation. This includes any inter-company income earned i.e. owned wholesalers earning income for any placements without prior knowledge and agreement.

We agree to provide all the services as outlined in the RFP document under section 2 Scope of Work/Services. We also agree to continue to provide all of the services that we have historically preformed since 2006 and outlined in our response.

Since 2007 we have earned \$100,000 total fee for all of our services. Starting in 2016 we put \$20,000 of the fee at risk. If we accepted any commission for the purpose of premium efficiencies we returned the commission back to ACTA. For our services going forward we propose the following:

Broker Fee for All-Inclusive Program:

- A five year term with an annual fee of \$85,000. The fee will be for services commencing on ??? 1st 2019 and ending ??? 30<sup>th</sup> 2024.
- We will put up \$15,000 of the fee at risk each year.
- The fee at risk will be graded on an agreed upon scorecard based on our services.
- The \$85,000 annual fee will be the total fee earned.
- Two installments of \$35,000 commencing with agreement starting date (quarterly can be accomendated)
- \$15,000 at risk fee to be paid 30 days after yearly contract date based on scorecard



## A. Service Team Bios

## **BRYAN FITZPATRICK**

**Senior Vice President & Account Manager**

### **Relevant Experience/Specialization**

Bryan has been associated on a legacy basis with Willis Towers Watson for the past 25 years. He has had a variety of positions from Managing Partner of the Long Beach/Ontario offices to client advocate.

Client advocacy has always been a major part of Bryan's responsibilities. Bryans has extensive experience with Large Complex Property with substantial catastrophic exposure i.e. EQ, Wind and Flood, Construction Programs, Alternative Risk programs, Builders Risk, Loss Portfolio Transfers, Deductible Buy Downs/ Extended Completed Operations Coverage, and Professional Liability. He provides insurance brokering and consulting advice to a variety of the fortune 500 companies.

### **Role at Willis Towers Watson**

Bryan is responsible for developing a strategic Risk Management program that best fits the needs and philosophy of the client. He is accountable for implementing the risk management program by directing, managing, and accessing all of Willis Towers Watson resources including marketing, Claims, Loss Control, Service, IT, and Corporate Resources.

### **Education and Credentials**

Bryan is a graduate from California State University of Fullerton. He is currently a member of the advisory board for the school of Business at Fullerton.



## **DARLENE BADA, CIC, CRM, CPIW**

**Vice President & Account Executive**

### **Relevant Experience/Specialization**

Darlene's 20+ years of multi-line commercial insurance work include experience in property, general liability, worker's compensation and management liability products. Prior to joining Willis Towers Watson, she held positions at national brokers Marsh & McLennan and Wells Fargo Insurance & Financial Services.

### **Role at Willis Towers Watson**

Darlene serves as the first point of contact for her clients and is responsible for the overall management and execution of day-to-day activities and administration ensuring that servicing standards meet Willis Towers Watson guidelines. Her duties include program analysis and strategy, creating insurance specifications and submissions to markets, negotiations with underwriters, production of special reports as needed, and general administrative duties such as the issuance of certificates of insurance, review of policies and preparation and billing of premium.

Darlene holds a degree in Business Administration with an emphasis in Marketing from Loyola Marymount University. She has earned the CIC, CRM and CPIW designations.

## **MARY MOLTHEN**

**Client Manager**

### **Relevant Experience/Specialization**

Mary is part of the Property & Casualty team and has 20 years of client servicing experience in Commercial insurance. Mary joined Willis Towers Watson in April 2019 and is responsible for providing day to day servicing on large and complex accounts, assisting with exposure and coverage issues. She is committed and dedicated to ensuring clients' needs are consistently exceeded.

### **Role at Willis Towers Watson**

Supports team with all aspects of account administration.

### **Education and Credentials**

Mary currently holds a Broker Insurance License and her CISR designation.

## **KIMBERLY Y. CAMPBELL, AIS**

**Vice President, FINEX Broker**

### **Relevant Experience/Specialization**

Kim has more than 25 years of experience in executive risk liability insurance with a coverage focus on:

- Directors & Officers Liability
- Crime Coverage
- Fiduciary Liability
- Employment Practices Liability
- Employed Lawyers Liability
- Special Coverage
- Miscellaneous Professional Liability
- Cyber Liability.

### **Role at Willis Towers Watson**

Kim has served as branch expert user of the Willis Towers Watson Panel and sat on the national committee to review Panel terms and conditions. She is on the FINEX Advisory Sub-Committee, representing the middle-market/private company sector.

### **Education and Credentials**

Kim is a graduate of Michigan State University, Bachelor of Arts in Education; member of PLUS, AIS designation holder and is working on RPLU Designation.

## **JULLY YOON ROJAS**

**FINEX Claims & Legal Group**

### **Relevant Experience/Specialization**

Prior to joining Willis Towers Watson, July worked as coverage counsel at national and global law firms representing domestic and international insurer carriers with respect to Directors & Officers (“D&O”) Liability and other Management Liability coverage and legal issues. July also most recently served as Claims Manager at a large commercial insurance carrier, evaluating claims involving financial institutions, public and private companies, private equity firms, and non-profit organizations.

July’s experience as a legal and insurance professional spans 15 years in coverage analysis and evaluation, claims management, coverage litigation, and policy interpretation and advice.

July is a Claims Advocate within the Claims & Legal Group and provides counsel and claims support to clients in the areas of: D&O Liability, Employment Practices Liability, Cyber Liability, Professional Liability, Fiduciary Liability, Crime / Fidelity. July is based in our San Francisco office.

### **Education and Credentials**

Jully received her Bachelor of Arts, with honors, from University of California, Berkeley, and her Juris Doctorate from University of California, Hastings College of the Law in San Francisco. Jully is licensed to practice law in California.

## **JON JANES**

**Senior Vice President, FINEX North America**

### **Relevant Experience/Specialization**

Jon has more than 12 years of experience in all aspects of executive risk liability insurance, including:

- Risk profile analysis including cyber risks for the natural resources industry
- Structure and placement of coverage for publicly and privately held companies, including Fortune 500
- Initial public offerings, mergers and acquisitions and other liquidity events
- Legal and market trends
- Claims

He serves as the FINEX vertical leader for Willis Towers Watson's North American natural resources industry practice and is a member of the FINEX Advisory Committee, which is tasked with developing product, coverage and process solutions for our clients and colleagues. He is also frequent speaker on executive risk liability insurance trends, claims and legal developments.

### **Education and Credentials**

Jon is a graduate of Trinity University, B.S. Business Administration, and the University of San Francisco School of Law, cum laude.

## **CHARLES F. SHAY**

**Midwest/ West Region FINEX Leader, North America**

### **Relevant Experience/Specialization**

With over 25 years of underwriting and brokerage experience focusing on the large and complex risk space, Chuck has specialized in designing cost saving strategies and programs for many Fortune 1000 companies. One such strategy is the concept of an indemnification trust for the board of directors, replacing the need for traditional D&O insurance.

Chuck was named a Power Broker by Risk & Insurance Magazine in 2007 and 2009.

### **Education and Credentials**

Bachelor of Arts, Finance, Susquehanna University, Selinsgrove, PA



## **ANN FRASER**

**President, Railroad Insurance Services, LLC**

### **Relevant Experience/Specialization**

Ann has been the president of Railroad Insurance Services since 2001. She is a wholesale producer specializing in procuring liability and property coverages for railroad and rail-related accounts. She also assists retail producers in identifying & covering exposures specific to the rail industry. She has extensive knowledge of current rail markets and long-term relationships with many rail underwriters and is also responsible for the oversight of the safety services and recommendations of the carrier.

Her duties include Access Surplus Lines Markets as needed consult with Account & Marketing Managers regarding program design Industry

From 1979 – 2001 she worked in the railroad underwriting departments of three major insurance companies, each one a leader in the railroad insurance marketplace at the time:

- 1979 – 1982 & 1985 – 1998: Cal Union/CIGNA Companies  
Last position held – Assistant Vice President & Manager
- 1982 – 1985: Cameron & Colby/First State Insurance Co./Hartford Companies  
Last position held – Senior Casualty Analyst
- 1998 – 2001: CNA E&S/CNA Insurance Companies  
Last position held: Casualty Underwriting Consultant

Her responsibilities at all three companies included the underwriting of a broad spectrum of railroad risks and coverages in North America, including Class I, Regional and Short Line Railroads, Urban Transit Systems, Tourist & Excursion Railroads, Railcar Leasing Operations, Force Account Liability, Railroad Contractors and Railroad Protective Liability.

Other Railroad related capabilities

- Familiarity with specialty railroad exposures and coverages such as the Federal Employers Liability Act, Trackage Rights and Interchange Agreements, Pollution & Evacuation issues and hazardous cargo, Foreign Line Rolling Stock and Bill of Lading, private & public grade crossings & associated liability issues, Locomotive Inspection Act.
- Familiarity with Railroad Insuring Forms and Endorsements offered by major Railroad Markets
- Certificate in Basic Track Inspection from Zeta-Tech Associates

### **Project Role**

Ann is President of the Wholesaler New World Ventures Railroad operations. Ann will play a major role not only on the design of the insurance program for ACTA, but will also in her capacity as a Wholesaler direct marketing efforts in the Surplus Lines marketplace.

### **Account References**

#### **As underwriter:**

- Massachusetts Bay Transportation Authority (MBTA)
- Metropolitan Atlanta Rapid Transit Authority (MARTA)
- Washington Metropolitan Area Transit Authority (WMATA)
- Port Authority Transit Corporation/Delaware River Port - Authority(PATCO/DRPA)
- Southeast Pennsylvania Transportation Authority (SEPTA)
- Canadian Pacific Railroad
- Consolidated Rail Corporation (Conrail)
- Kansas City Southern Railroad

#### **As Wholesale Producer:**

- New York MTA
- North Coast Railroad Authority
- Team Facility Services – Crude Oil Transload
- Dakota Missouri Valley & Railroad Western
- Port of Los Angeles Red Car Line
- Angels Flight Railway
- Patriot Rail

#### **Participation in Proposals for:**

- METRA
- Massachusetts Bay Transportation Authority (MBTA)
- Denton County Transportation Authority (DCTA)
- Fort Worth & Western Railroad
- Virginia Railway Express

### **Education and Credentials**

Ann holds a Certificate in Basic Track Inspection from Zeta-Tech Associates and has her Chartered Property and Casualty Underwriter (CPCU) designation. She also attended Glendale College and UCLA.

## **ROBERT E. HAYES, JR. , CPCU**

**Senior Vice President & Client Advocate**

### **Relevant Experience/Specialization**

Bob joined Willis Towers Watson in 2012. With over 30 years of experience in the insurance industry, Bob has acted as account executive and / or property broker for many major corporations in Southern California. His clients have come from a wide range of industries, with an emphasis in real estate for the past 10 years. His clients, past and present, include Irvine Company, CB Richard Ellis, Donahue Schriber, and C.J. Segerstrom.

Prior to joining Willis Towers Watson, Bob worked at another major broker where he was Head of Property Broking, Managing Director of Client Services, Senior Account Executive and Property Broker.

### **Role at Willis Towers Watson**

Property placement, marketing strategy, and program negotiation.

### **Education and Credentials**

Bob holds a Bachelor of Science degree in Psychology from the University of the Pacific. He also has a Chartered Property and Casualty Underwriter (CPCU) designation.

## **MARILYN DITTMAN**

**Senior Vice President, Area Practice Leader  
Risk Control and Claims Advocacy Practice**

### **Relevant Experience/Specialization**

Marilyn is a Senior Claim Consultant and Area Practice Leader in the Risk Control and Claim Advocacy Practice. As an APL Marilyn is responsible for the coordination and oversight of claim consulting services delivered by the local claims team. Marilyn brings 35+ years of multi-line claim advocacy and consulting experience to her clients with an emphasis on property claims.

Prior to joining Willis Towers Watson in 1993 Marilyn worked in Claim Management for several regional and national insurance brokers. Marilyn has participated on several broker property CAT teams and over the years has been involved in numerous industry related organizations including membership on insurance company claim advisory boards.

### **Role at Willis Towers Watson**

Because of her extensive claim advocacy experience and strong technical skills Marilyn works primarily on large global and complex property programs. Her priority is to ensure that claims are paid quickly, efficiently and appropriately.

Marilyn has experience working with many industries including healthcare, pharmaceutical, construction, education, public entity, real estate and hospitality.



She promotes the delivery of proactive claim management programs that further efficiencies and cost-effectiveness. She works closely with property and casualty Risk Control and the many specialty practices within Willis Towers Watson to identify opportunities to drive better outcomes.

#### **Education and Credentials**

Marilyn has been a licensed Fire and Casualty Broker-Agent since 1985. She continues her industry education through insurance classes and participating in various claims and insurance associations.

## **PETER BOWEN, CSP, CPEA, ERM, ARM**

**Senior Risk Control Consultant,  
Risk Control and Claims Advocacy Practice**

#### **Relevant Experience/Specialization**

Peter has 30 years' experience as a trusted advisor to local, national and global business. His focus is on helping clients reduce their total cost of risk through safety management processes that center on risk identification and risk control.

Peter has consulted with large and intermediate size clients concerning casualty-lines risk control matters. His varied client assignments have included: county and city governments; acute care hospitals and nursing homes; dialysis clinics; biotechnology companies; pharmaceutical companies; school districts; property management companies; motion picture and television production studios; airport operations, aviation services, air cargo; global and regional agriculture and food processing companies.

#### **Role at Willis Towers Watson**

Coordinates all safety and risk control activities with carriers. He also delivers educational webinars and provides industry and regulatory updates.

#### **Education and Credentials**

Peter holds a Master of Science degree in Finance and Safety Management from the University of Arizona. He has several insurance designations including his Certified Safety Professional (CSP),

Certified Professional Environmental Auditor - Safety & Health (CPEA), Environmental Risk Manager (ERM) and Associate in Risk Management (ARM).



## **BEN PHILLIPS, ARM**

**Executive Vice President  
National Property Practice**

### **Relevant Experience/Specialization**

Ben joined Willis Towers Watson in 2008 as part of the Hilb Rogal & Hobbs (HRH) acquisition. Been started his career at HRH as an Information Specialist, later serving as manager for the west coast OCIP/Wrap-up practice.

Ben has a strong background in database design, this coupled with his construction background puts him in a unique position to help Willis Towers Watson clients model their losses to catastrophic events.

His analytical ability also allows him to create innovative visual depictions of our clients exposures through advanced mapping software.

Willis Towers Watson clients further benefit by utilizing Bens talents to help streamline and enhance their own spreadsheets, databases, allocations, and other data driven projects.

### **Role at Willis Towers Watson**

Ben currently works with the national property practice providing, earthquake, hurricane, terrorism, & winter storm loss analyses, electronic flood determinations, and location intelligence (sophisticated mapping services).

### **Education and Credentials**

Prior to joining the insurance industry, Ben owned and operated his own general contracting company for 20 years. Ben received his B.A. degree in Psychology from San Jose State University and holds a California Property & Casualty License and has obtained his ARM designation.

## **Samuel Toren, PE, CSP, CFPS**

**Vice President, Western Regional Manager, Property Risk Control  
Risk Control and Claim Advocacy Practice**

### **Relevant Experience/Specialization**

Samuel Toren brings over 20 years of property risk control industry experience daily to his clients. He is currently the West Coast Regional Property Risk Control Manager within the Risk Control and Claim Advocacy Practice.

Prior to joining Willis, Sam spent 4 years with Marsh in Los Angeles CA where he had regional and national responsibilities similar to those in his current position. Before joining Marsh, Sam worked for TVA Fire & Life Safety, a worldwide fire protection and loss control consulting company. At TVA, Sam headed the property loss control department, working with insurance companies, insurance brokers, and Fortune 100 companies on loss control for HPR property insurance. Sam began his career as a Senior Chemical Consultant for a highly protected risk property insurance carrier Industrial Risk Insurers, servicing California, National, and International customers. Sam has specialties in power generation & public utilities, chemical/petrochemical field, high tech sectors, heavy industrial manufacturing, aircraft & automobile manufacturing, and warehousing.

### **Role at Willis Towers Watson**

Sam has extensive experience in developing complete global property risk control programs for clients which includes a background in:

- Property Risk Profiles & Marketing Submissions
- Strategic Risk Assessments
- Matrix Analysis of Insurance Carrier and Third Party Vendor Services
- Business Continuity Planning & Emergency Response Procedures
- Developing Global Property Conservation Guidelines and “Best Practices”
- Client Exposure “Risk Mapping”

### **Education and Credentials**

Sam has a Bachelor of Science Degree in Chemical Engineering from the University of California at Los Angeles. Sam holds a Professional Engineering Certification (PE), is a Certified Safety Professional (CSP), and a Certified Fire Protection Specialist (CFPS).

Sam is a member of the National Fire Protection Association, and past President of the Southern California Chapter of the Society of Fire Protection Engineers.



## **Julie Travers, SIP, WCCP**

**Workers' Compensation Consultant, AVP**

### **Relevant Experience/Specialization**

Julie has over 16 years of experience in workers' compensation claims handling and consulting. She started her insurance career at Liberty Mutual Insurance as a Claims Examiner and at MTA as a Senior Claims Examiner. Prior to joining Willis Towers Watson, Julie worked as a Workers' Compensation Claims Consultant for an insurance broker for 6 years.

### **Role at Willis Towers Watson**

As a Consultant, Julie provides guidance and technical expertise on insured, self-insured, and self-administered workers' compensation programs. She has experience in most industries including entertainment, construction, medical, manufacturing, hospitality and retail. Julie has developed and implemented claim procedures specific to the client's needs. She has managed the transition of claim programs to new claim administrators to promote cost savings and improve claims service.

Julie has also provided the following services:

- Conducted best practices claim audits
- Operations analysis and formal claim reviews
- Managed the transition of claim programs
- Promote cost savings and improved claims service

### **Education and Credentials**

Julies earned a Bachelor of Arts Degree in Sociology from California State University, Northridge and she holds a Workers' Compensation Claims Professional Designation (WCCP) and a SIP (Self Insured Programs) Certification.



## B. Insurance Verification





# CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)  
07/26/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| <b>PRODUCER</b><br>Willis of New York, Inc.<br>c/o 26 Century Blvd<br>P.O. Box 305191<br>Nashville, TN 372305191 USA |        | <b>CONTACT NAME:</b><br>PHONE (A/C No. Ext): 1-877-945-7378 FAX (A/C No): 1-888-467-2378<br>E-MAIL ADDRESS: certificates@willis.com  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
|--|--------|--|--|------------|--------|-----------------------------------|-------|--|-------|--------------------------------------|-------|------------|--|------------|--|------------|--|
| <b>INSURED</b><br>Willis North America, Inc.<br>and its subsidiaries<br>280 Liberty Street<br>New York, NY 10281     |        | <b>INSURER(S) AFFORDING COVERAGE</b><br><table border="1"> <tr> <th>INSURER A:</th> <th>NAIC #</th> </tr> <tr> <td>Surich American Insurance Company</td> <td>16535</td> </tr> <tr> <td>INSURER B: Sentry Insurance a Mutual Company</td> <td>24988</td> </tr> <tr> <td>INSURER C: Willis Submission Carrier</td> <td>GENRC</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table> |  | INSURER A: | NAIC # | Surich American Insurance Company | 16535 | INSURER B: Sentry Insurance a Mutual Company | 24988 | INSURER C: Willis Submission Carrier | GENRC | INSURER D: |  | INSURER E: |  | INSURER F: |  |
| INSURER A:   | NAIC # |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
| Surich American Insurance Company  | 16535  |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
| INSURER B: Sentry Insurance a Mutual Company   | 24988  |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
| INSURER C: Willis Submission Carrier   | GENRC  |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
| INSURER D:   |        |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
| INSURER E:   |        |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |
| INSURER F:   |        |  |  |            |        |                                   |       |  |       |                                      |       |            |  |            |  |            |  |

## COVERAGES

CERTIFICATE NUMBER: W12137116

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSUR LTR | TYPE OF INSURANCE   | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|-----------|---|-----------|----------|---------------|-------------------------|-------------------------|--|
| A         | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY  |           |          | GLO014436303  | 07/01/2019              | 07/01/2020              | EACH OCCURRENCE \$ 5,000,000   |
|           | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                                |           |          |               |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000                           |
|           | <input checked="" type="checkbox"/> Contractual Liability   |           |          |               |                         |                         | MED EXP (Any one person) \$ 5,000  |
|           | GEN'L AGGREGATE LIMIT APPLIES PER:  |           |          |               |                         |                         | PERSONAL & ADV INJURY \$ 5,000,000   |
|           | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC      |           |          |               |                         |                         | GENERAL AGGREGATE \$ 5,000,000   |
|           | OTHER:  |           |          |               |                         |                         | PRODUCTS - COMP/OP AGG \$ 5,000,000  |
| B         | <input type="checkbox"/> AUTOMOBILE LIABILITY   |           |          | 90-20597-04   | 07/01/2019              | 07/01/2020              | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000                               |
|           | <input type="checkbox"/> ANY AUTO   |           |          |               |                         |                         | BODILY INJURY (Per person) \$  |
|           | <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS                            |           |          |               |                         |                         | BODILY INJURY (Per accident) \$  |
|           | <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY |           |          |               |                         |                         | PROPERTY DAMAGE (Per accident) \$  |
| A         | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR                   |           |          | 7108938       | 07/01/2019              | 07/01/2020              | EACH OCCURRENCE \$ 7,000,000   |
|           | <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE                                     |           |          |               |                         |                         | AGGREGATE \$ 7,000,000   |
|           | DED <input type="checkbox"/> RETENTION \$   |           |          |               |                         |                         | \$   |
|           |   |           |          |               |                         |                         | \$   |
| B         | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY   |           |          | 90-20597-01   | 07/01/2019              | 07/01/2020              | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER |
|           | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NY)                                   | Y/N       | N/A      |               |                         |                         | E.L. EACH ACCIDENT \$ 1,000,000  |
|           | If yes, describe under DESCRIPTION OF OPERATIONS below  | No        |          |               |                         |                         | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000  |
|           |   |           |          |               |                         |                         | E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                       |
| B         | Workers Compensation & Employers Liability  |           |          | 90-20597-03   | 07/01/2019              | 07/01/2020              | E.L. Each Accident \$1,000,000   |
|           | Per Statute   |           |          |               |                         |                         | E.L. Disease - Each Emp \$1,000,000  |
|           |   |           |          |               |                         |                         | E.L. Disease - Policy Int \$1,000,000  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

SEE ATTACHED

## CERTIFICATE HOLDER

## CANCELLATION

|                       |  |
|-----------------------|--|
| Evidence of Insurance | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|                       | AUTHORIZED REPRESENTATIVE<br>  |

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ACORD 25 (2016/03)

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SR ID: 18312464

BATCH: 1300854

AGENCY CUSTOMER ID: \_\_\_\_\_  
LOC #: \_\_\_\_\_



## ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

|                                    |                         |   |  |
|------------------------------------|-------------------------|---|--|
| AGENCY<br>Willis of New York, Inc. |                         | NAMED INSURED<br>Willis North America, Inc.<br>and its subsidiaries<br>200 Liberty Street<br>New York, NY 10281 |  |
| POLICY NUMBER<br>See Page 1        |                         | EFFECTIVE DATE: See Page 1  |  |
| CARRIER<br>See Page 1              | NAIC CODE<br>See Page 1 |   |  |

### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM.

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

INSURER AFFORDING COVERAGE: Willis Submission Carrier

NAIC#: GENRC

POLICY NUMBER: SH1920 EFF DATE: 07/01/2019 EXP DATE: 07/01/2020

| TYPE OF INSURANCE: | LIMIT DESCRIPTION: | LIMIT AMOUNT: |
|--------------------|--------------------|---------------|
| Errors & Omissions | Per Claim          | \$5,000,000   |
|                    | Aggregate Limit    | \$5,000,000   |

#### ADDITIONAL REMARKS:

Professional Indemnity Insurance (Errors & Omission Liability) Carrier: Stone Mountain Insurance Company.

All employees of Willis North America and its subsidiaries are included as Insureds under the Errors & Omissions policy.

INSURER AFFORDING COVERAGE: Sentry Insurance a Mutual Company

NAIC#: 24988

POLICY NUMBER: 90-20597-02 EFF DATE: 07/01/2019 EXP DATE: 07/01/2020

| TYPE OF INSURANCE:     | LIMIT DESCRIPTION:    | LIMIT AMOUNT: |
|------------------------|-----------------------|---------------|
| Workers Compensation & | EL Each Accident      | \$1,000,000   |
| Employers Liability    | EL Disease - Each Emp | \$1,000,000   |
| Per Statute            | EL Disease-Policy Lmt | \$1,000,000   |

Certificate showing \$10,000,000 of E&O limits will be amended at the time of selection



**Willis North America Inc.**

**Additional Named Insured covered under the insurance policies noted in attached *Accord form*.**

Acclaris Holdings, Inc.  
 Acclaris, Inc.  
 Acclaris Business Solutions Private Ltd  
 Encore Insurance PCC, Limited  
 Encore One IC, Inc.  
 Encore 1551 IC, Inc.  
 Extend Health, LLC (formerly Extend Health, Inc.)  
 Extend Insurance Services LLC  
 Fairly Consulting Group, LLC  
 Freberg Environmental, Inc.  
 Innovisk Services Inc.  
 Innovisk Capital Partners, Inc  
 Liazon Benefits, Inc.  
 Liazon Corporation  
 Market Street Holdings, Inc.  
 Premium Funding Associates, Inc.  
 Professional Consultants Insurance Company, Inc.  
 RSDIG Risk Purchasing Group, Inc.  
 Special Contingency Risks Inc. – except for Professional Liability as it is covered elsewhere  
 Stone Mountain Insurance Company  
 The Willis Towers Watson Foundation  
 Towers Perrin Capital Corp.  
 Towers Watson Delaware Holdings LLC (Formerly Towers Watson Delaware Holdings Inc.)  
 Towers Watson Investment Services, Inc.  
 Towers Watson Retiree Insurance Services, Inc.  
 Towers Watson Puerto Rico Insurance Brokerage Inc.  
 Towers Watson Software Limited  
 TPF&C International, Inc.  
 Vertus Insurance Partners, LLC  
 Vertus Insurance Agency, LLC  
 Watson Wyatt International, Inc.  
 Westport Financial Services, LLC  
 Westport HRH, LLC  
 Willis Administrative Services Corporation  
 Willis Americas Administration, Inc.  
 Willis Giaconia Life, LLC  
 Willis HRH, Inc.  
 Willis Insurance Services of California, Inc.  
 Willis Insurance Services of Georgia, Inc.  
 Willis NA Inc.  
 Willis North America Inc.  
 Willis North American Holding Company  
 Willis of Alabama, Inc.  
 Willis of Arizona, Inc.  
 Willis of Colorado, Inc.  
 Willis of Connecticut, LLC  
 Willis of Florida, Inc.  
 Willis of Greater Kansas, Inc.  
 Willis of Illinois, Inc.  
 Willis of Louisiana, Inc.



As of 7/1/19

Willis of Maryland, Inc.  
Willis of Massachusetts, Inc.

**Willis North America Inc.**

**Additional Named Insured covered under the insurance policies noted in attached *Accord form*.**

Willis of Michigan, Inc.  
Willis of Minnesota, Inc. (merged into Willis of Ohio Inc. Effective- 1/1/19)  
Willis of Mississippi, Inc.  
Willis of New Hampshire, Inc.  
Willis of New Jersey, Inc.  
Willis of New York, Inc.  
Willis of North Carolina, Inc.  
Willis of Oklahoma, Inc.  
Willis of Oregon, Inc.  
Willis of Pennsylvania, Inc.  
Willis of Seattle, Inc.  
Willis of Tennessee, Inc.  
Willis of Texas, Inc.  
Willis of Vermont, Inc. - name change (formerly known as Smith, Bell & Thompson, Inc.)  
Willis of Virginia, Inc.  
Willis of Wisconsin, Inc.  
Willis of Wyoming, Inc.  
Willis Personal Lines, LLC  
Willis Processing Services, Inc.  
Willis Programs of Connecticut, Inc.  
Willis Re Inc.  
Willis Securities, Inc.  
Willis Services LLC  
Willis Towers Watson CAC, Inc.  
Willis Towers Watson Management (Vermont), Ltd.  
Willis Towers Watson Midwest, Inc. (Formerly Willis of Ohio, Inc.)  
Willis Towers Watson Risk Purchasing Group, Inc.  
Willis Towers Watson US LLC (Formerly Towers Watson Delaware Inc.)  
Willis Towers Watson Global Business Services Inc.  
Willis Towers Analytical Insurance Services Inc.  
WTW Delaware Holdings LLC  
Willis US Holding Company, LLC (formerly Willis US Holding Company, Inc.)  
Sage Underwriters, LLC  
Sage Western Insurance Services, LLC.

## About Willis Towers Watson

Willis Towers Watson (NASDAQ: WLTW) is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 45,000 employees serving more than 140 countries and markets. We design and deliver solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Our unique perspective allows us to see the critical intersections between talent, assets and ideas — the dynamic formula that drives business performance. Together, we unlock potential. Learn more at [willistowerswatson.com](http://willistowerswatson.com).

Transmittal 3

Moffatt and Nichol Agreement



AGREEMENT NO. C0921BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
MOFFATT & NICHOL

THIS AGREEMENT ("Agreement") is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority ("ACTA") acting by and through its Governing Board ("Board"), and MOFFATT & NICHOL, a California corporation, whose address is 4225 E. Conant Street, Suite 101, Long Beach, California 90808 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to provide ACTA with on-call engineering services ("Project"); and

WHEREAS, Consultant is an organization that provides engineering services, including, but not limited to those services required by ACTA and, by virtue of training and experience, is well-qualified to provide such services to ACTA; and

WHEREAS, ACTA does not employ sufficient personnel with the required expertise and it is not feasible to do so on a temporary or occasional basis;

## NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Incorporation of Recitals

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant

2.1 All of the potential services Consultant shall perform for ACTA are set forth in Exhibit A hereto and hereinafter shall be referred to as "Scope of Work."

2.2 Consultant's performance of tasks shall occur as follows:

a. ACTA's Chief Executive Officer ("CEO") or his designee shall issue written Contract Task Orders ("CTO") in the form attached hereto as Exhibit B that specifies, without limitation the task or subtask to be performed; the specific services required in connection with such task or subtask; the deliverables required in the performance of such task or subtask; the schedule for the performance of such task or subtask; authorized personnel who may perform the task or subtask; and authorized compensation for such task or subtask.

b. Consultant, to reflect its agreement with all the terms of such CTO, shall sign, date and return such CTO to ACTA.

c. Following ACTA's receipt of the CTO signed by Consultant, ACTA's CEO (or his designee) shall issue a Notice to Proceed in the form attached hereto as Exhibit C that has been signed by ACTA authorizing Consultant to commence performance of the services contemplated by such CTO.

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that ACTA's CEO lacks authority to request the performance of any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work or a CTO, or in the absence of both a CTO and a Notice to Proceed, are performed as a volunteer and shall not be compensable under this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's CEO, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted on the effective date of this Agreement, whom ACTA's CEO may subsequently approve in writing ("Subconsultants"), or as listed on CTOs. Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to ACTA and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon ACTA's CEO's written request, Consultant shall supply ACTA with all agreements between it and its Subconsultants.

2.5 Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between ACTA and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, City, or any other governmental entity. ACTA shall pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.6 ACTA's CEO shall resolve in his sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of a CTO, and the amount of compensation due. Upon written notice from ACTA's CEO, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to his reasonable satisfaction and at Consultant's sole cost and expense. Compliance with the requirements of this Section 2.6 is a condition to payment of compensation by ACTA to Consultant pursuant to this Agreement.

2.7 Consultant's representative responsible for administering this Agreement, Phil Balmeo ("Project Manager"), shall not be changed without ACTA's CEO's written approval. ACTA's CEO may, for any reason in his sole reasonable discretion, require Consultant to substitute a new Project Manager. If ACTA requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already

performed at Consultant's sole cost and expense.

2.8 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.9 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.9 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice ACTA at the lower rate.

2.10 Consultant shall promptly consider and implement, to his reasonable satisfaction, any written comments of ACTA's CEO.

2.11 Consultant shall review information provided by ACTA. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of ACTA's CEO in writing.

2.12 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by ACTA's CEO. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in a project CTO shall entitle ACTA to have services completed by others, shall obligate Consultant to pay ACTA ACTA's cost to undertake completion of such services, and shall authorize ACTA to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in a CTO shall result in economic losses to the ACTA, including, but not limited to, the timely bidding and awarding of contracts, completion of the Project in connection with which Consultant's services are rendered and the use of such project by ACTA, the users of the Alameda Corridor and the public.

### 3. Services To Be Performed By ACTA

3.1 ACTA shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by ACTA, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of ACTA's CEO, shall assist in completing the Scope of Work.

3.2 Consultant shall provide ACTA's CEO with reasonable advance written notice if it requires access to any premises under the control of ACTA. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of ACTA's CEO, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such premises may be occupied or used by railroad companies, tenants or contractors of ACTA and that access rights granted by



ACTA to Consultant shall be consistent with any such occupancy or use.

3.3 ACTA shall not be obligated to provide information and/or services except as specified in this Agreement.

4. Effective Date and Term

4.1 The effective date of this Agreement shall be the date of its execution by ACTA's CEO or his designee upon authorization of the Board.

4.2 Commencing on the Agreement's effective date, this Agreement shall be in full force and effect until the earlier of the following occurs:

- a. Five (5) years has lapsed from the effective date of this Agreement; or
- b. ACTA's Board, in its sole discretion, terminates this Agreement pursuant to Section 6.

5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, ACTA shall pay Consultant and Consultant shall accept a sum not to exceed Ten Million Dollars (\$10,000,000). The total sum payable under this Agreement shall be determined by Contract Task Orders and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.

5.2 Compensation payable under this Agreement for payment for labor, travel, per diem, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses") are listed in Exhibit D. No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit D expressly so allows.

5.3 Compensation payable under this Agreement shall be on a (1) Fixed Fee, (2) Time and Materials, (3) Equal Payment or (4) any combination of the three, as may be more particularly specified in a CTO.

a. Fixed Fee. Lump sum compensation for satisfactory performance as may be specified in a particular Contract Task Order.

b. Time and Materials Fee. Consultant shall be paid based on the actual time expended in the performance of tasks using the applicable rates set forth in Exhibit D. Consultant will also be reimbursed for materials and other out-of-pocket expenses at cost. The rates identified in Exhibit D state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged unless authorized in Exhibit D.

c. Equal Payment Fee. Consultant shall be paid equal amounts over time throughout a particular CTO, up to the stated fixed amount.

5.4 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to ACTA for services performed during the prior month, accompanied by such records and receipts as may be required by Section 5.5. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and one (1) copy of each such invoice for payment in the format that contains the information specified in Exhibit E, and that includes the following certification:

"I certify under penalty of perjury that the above invoice is true and just, in accordance with the terms of Agreement No. \_\_\_\_\_, that payment of this invoice has not been received and that none of the items contained in the invoice have been submitted to any other agency.

\_\_\_\_\_  
(signed)

5.5 Where Consultant employs Subconsultants under this Agreement, Consultant shall submit to ACTA, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit F) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

5.6 Consultant shall submit supporting documents with each invoice, which may include, but not be limited to, provider invoices, receipts, payrolls, and time sheets. Consultant is not required to submit support for direct costs items of \$25 or less. All invoices are subject to audit.

5.7 All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of ACTA business, the same may be reviewed and approved.

For payment and processing, all invoices shall be mailed to the following address:

Accounts Payable Department  
Alameda Corridor Transportation Authority  
3760 Kilroy Airport Way, Suite 200  
Long Beach, California 90806

In addition to, or in lieu of, mailing invoices per the above instructions, Consultant may email invoices to [accountspayable@acta.org](mailto:accountspayable@acta.org), and Consultant shall be responsible for confirming receipt of emailed invoices. ACTA shall not be responsible for invoices incorrectly emailed or not received due to technical issues, regardless of the source of such issues.

5.8 Prior to any annual anniversary date (i.e., the effective date) of this Agreement, Consultant may submit a revised rate sheet reflecting increases for Consultant's employees' rates as set forth in Exhibit D. ACTA's CEO has delegated authority to review, and in his sole reasonable discretion, approve in writing the revised proposed hourly rates. Any such CEO-approved revised Consultant rates shall become effective on the anniversary date of this Agreement and incorporated herein as "Exhibit D-Year \_\_, Consultant Revised Hourly Rates".

## 6. Termination

6.1 The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon ACTA's CEO giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of ACTA to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

6.2 Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. ACTA's CEO, in his sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly.

6.3 If Board so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to ACTA in an organized, usable form with all items properly labeled to the degree of detail specified by ACTA's CEO. No compensation shall be due Consultant until it complies with the requirements of this paragraph.

6.4 Pursuant to Section 5 of ACTA's Amended and Restated Joint Exercise of Powers Agreement, ACTA shall be restricted in its powers in the same manner as the City of Los Angeles is restricted in its exercise of similar powers. Therefore, this Agreement is subject to the provisions of the Los Angeles City Charter Section 320 which precludes ACTA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

ACTA, its board, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the



Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

## 7. Recordkeeping and Audit Rights

7.1 Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied. Consultant's books and records shall be readily accessible to and open for inspection and copying at the premises by ACTA, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

7.2 During the term of this Agreement, ACTA may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to ACTA. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ACTA at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ACTA. ACTA's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to ACTA, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Section 7.2 shall constitute a material breach of this Agreement and shall entitle ACTA to withhold any payment due under this Agreement until such breach is cured.

## 8. Consultant Is An Independent Contractor

Consultant, in the performance of the Scope of Work, is an independent contractor and not an agent or employee of ACTA. Consultant shall not represent itself as an agent or employee of ACTA and shall have no power to bind ACTA in contract or otherwise.

## 9. Indemnification

9.1 Indemnification. Except for the sole negligence or willful misconduct of ACTA, its Board or any of its officers, agents, employees, assigns and successors in interest, Consultant undertakes and agrees to defend, indemnify and hold harmless ACTA, its Board and any of its officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, arbitration proceedings, administrative proceedings, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by ACTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to ACTA under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California.

9.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including without limitation, Section 2782.8 of the California Civil Code), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said Section 2782.8, Consultant shall indemnify, protect, defend and hold harmless ACTA, its Board and any of its officers, agents, employees, assigns, and successors in interest from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against ACTA, its Board, officers, agents, employees, assigns, or successors in interest that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, or the acts or omissions of an officer, employee, agent or Subconsultant, excepting only liability resulting from the negligence or willful misconduct of ACTA.

## 10. Insurance

### 10.1 Insurance procured by Consultant on Behalf of Consultant

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and as a condition precedent to the effectiveness of this Agreement, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

#### (a) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less

than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CEO may permit a self-insured retention or self-insurance in those cases where, in his judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision, a severability of interest clause and have the railroad exclusion deleted. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(b) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than Five Hundred Thousand Dollars (\$500,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

(c) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against ACTA in any circumstance in which it is alleged that actions or omissions of ACTA contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

(d) Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers work to be performed pursuant to this



Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board.

## 10.2 Insurance Procured by Consultant on Behalf of ACTA

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and where Consultant is required to name ACTA, its Board, officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause ACTA to be named as an additional insured on all policies it procures in connection with this Section 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the Alameda Corridor Transportation Authority, its Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. \_\_\_\_\_, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by ACTA is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to ACTA's CEO with copies sent to ACTA's Co-General Counsel at the following addresses: 1) Office of the Long Beach City Attorney, 411 West Ocean Boulevard, 9<sup>th</sup> Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

## 10.3 Required Features of Coverages

Insurance procured by Consultant in connection with this Section 10 shall include the following features:

### (a) Acceptable Evidence and Approval of Insurance

Consultant's insurance broker or agent shall submit to ACTA the appropriate proof of insurance on Consultant's behalf.

Upon request by ACTA, Consultant shall furnish full copies of certified policies of

any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(b) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ACTA.

(c) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to ACTA as set forth herein.

(d) Modification of Coverage

ACTA's CEO, at his sole reasonable discretion, based upon recommendation of independent insurance consultants to ACTA, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(e) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the ACTA a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, ACTA's CEO may, at his own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(f) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, ACTA requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to ACTA.

#### 10.4 Accident Reports

Consultant shall report in writing to ACTA's CEO within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon any Alameda Corridor property if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or

damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

#### 11. Personal Services Agreement

Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Section 2.3. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on ACTA to such Subconsultant(s) or give the Subconsultant(s) any rights against ACTA.

#### 12. Confidentiality

Consultant shall not disclose any proprietary or confidential information of ACTA to any third party or parties during or after the term of this Agreement without the prior written consent of ACTA. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

#### 13. Affirmative Action

Consultant shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded shall contain a like nondiscrimination provision.

#### 14. Small/Very Small Business Enterprise Program

It is the policy of ACTA to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE), and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all ACTA contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist ACTA in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit G.



#### 15. Conflict of Interest

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of ACTA. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ACTA relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, ACTA may immediately terminate this Agreement by giving written notice thereof.

#### 16. Compliance with Applicable Laws

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, and local laws, ordinances, rules, regulations, and orders.

#### 17. Trademarks, Copyrights and Patents

Consultant shall promptly and fully inform ACTA's CEO in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant agrees to save, keep, hold harmless, protect and indemnify ACTA and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ACTA of any materials supplied by Consultant in the performance of this Agreement.

#### 18. Proprietary Information

Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ACTA as soon as they are developed, whether in draft or final form. ACTA has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ACTA at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ACTA the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ACTA, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of

communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the ACTA, its Board, officers, agents or employees, is not given in confidence. Accordingly, ACTA or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

#### 19. Royalty-Free License

If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, ACTA shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by ACTA. Upon ACTA's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to ACTA. It is expressly understood and agreed that, as between ACTA and Consultant, the referenced license shall arise for ACTA's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ACTA may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by ACTA.

#### 20. ACTA's Disclosure Obligations

Consultant acknowledges that ACTA is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

#### 21. Notices

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, registered or certified mail, return receipt requested, and postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to ACTA shall be addressed to its Chief Executive Officer, Alameda Corridor Transportation Authority, 3760 Kilroy Airport Way, Suite 200, Long Beach, California 90806, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

#### 22. Construction of Agreement

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a

result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

23. Titles and Captions

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

24. Modification in Writing

This Agreement shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this Agreement. Any such modifications are subject to all applicable approval processes required by ACTA.

25. Waiver

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

26. Governing Law/Venue

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. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

27. Severability

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

28. Integrated Agreement

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written,



regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

29. Exhibits; Sections

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to sections are to sections of this Agreement unless stated otherwise.

30. Counterparts and Electronic Signatures

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

The use of electronic signatures herein, or in any amendments to this Agreement, and any electronic records related to this Agreement (including, without limitation, any agreement or other record created, generated, sent, communicated, received, or stored by electronic means), shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

The words "execution," "signed," "signature," and words of like import in this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf" "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign or Acrobat Sign).

The parties agree that electronically signed and/or electronically transmitted signatures shall be conclusive proof, admissible in judicial proceedings, of such party's execution of this Agreement.

/////

/////

/////

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date next to their signatures.

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date: May 29, 2024

By: *Michael Leue*  
Michael C. Leue, P.E.  
Chief Executive Officer

Attest: *Maria M. Melendez*  
Secretary

MOFFATT & NICHOL

Date: 5/7/2024

By: *DocuSigned by:*  
*[Signature]*  
Eric Nichol

Name: \_\_\_\_\_

Title: CEO

Attest: *DocuSigned by:*  
*[Signature]*  
David Huchel

Name: \_\_\_\_\_

Title: Secretary

APPROVED AS TO FORM

May 29, 2024  
Hydee Feldstein Soto, Los Angeles City Attorney

By: *Heather M. McCloskey*  
Heather McCloskey (May 29, 2024 07:38 PDT)  
Heather M. McCloskey, Deputy  
ACTA Co-General Counsel



## EXHIBIT A - SCOPE OF WORK

Provide On-call Engineering Services in support of Alameda Corridor operations and maintenance. ACTA's Chief Operating Officer will manage the services from Consultant through Project Directives on an as-needed basis, with final approval provided by the Chief Executive Officer.

The following descriptions are intended to describe the type of assignments for which the Consultant might provide On-Call Engineering Services to ACTA. There is no assurance that Project Directives for these or any other services will be issued.

Engineering services that could be assigned through Project Directives may fall under the following discipline categories:

- Civil Engineering
- Railroad Engineering
- Highway Engineering
- Structural Engineering
- Structural Inspections (above water)
- Structural Inspections (below water)
- Utility Investigation and Locating
- Electrical Engineering
- Mechanical Engineering/Plumbing
- Geotechnical Engineering
- Surveying/Property Delineation
- Traffic Engineering
- Architecture
- Landscape Architecture
- CADD and GIS

Project Directives will provide specific detailed information about scope of work, schedule, resources, and budget for any service request, as mutually determined with the Consultant. The scope of work for requested as-needed services may include, but is not limited to the following:

- Project Administration, Management and Coordination
- Transportation, goods movement and logistics studies, analyses, modeling, and reports
- Rail operations analyses, RTS modeling, capacity assessments, studies, and reports
- Conceptual and preliminary design for planning and feasibility studies
- Rail schematic layout, geometric design, yard layout with single-point failure and route analysis
- Structural condition inspections of above and below water structures elements
- Condition surveys of various Alameda Corridor facilities
- Architectural, civil, electrical, mechanical, plumbing, structural, railroad or highway design for various facilities
- Final design for Contract Documents and Record Documents including construction drawings, specifications, calculations, cost estimates, schedules, phasing and access
- Identify, apply for and obtain agency plan checks and permits necessary to accomplish the assigned work, including city, state, federal, and CPUC/FRA for rail
- CADD drafting (MicroStation) with 3D/digital twin technology
- Grant and funding support
- Engineering support during bid and construction
- Facility and equipment commissioning
- Peer review

Rail engineering will use Union Pacific Railroad standards and other disciplines will use POLB or POLA standards.



**Exhibit "B"**

**Contract Task Order**

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Contract Task Order No. \_\_\_\_

Project Name

Pursuant to Section 2 of Agreement No. \_\_\_\_\_, after receipt of a written Notice to Proceed signed by ACTA's CEO, Consultant shall proceed with the following:

| <u>Task Services</u> | <u>Authorized Amount</u> |
|----------------------|--------------------------|
|----------------------|--------------------------|

Consultant shall provide all required task, services, and deliverables in accordance with Exhibit A to Agreement No. \_\_\_\_\_.

Consultant shall complete the work within \_\_\_\_ calendar days from ACTA's transmittal of its written Notice to Proceed.

Consultant shall undertake the following MBE/WBE/SBE/VSBE/DVBE/OBE utilization in connection with its performance of this Contract Task Order No. \_\_\_\_:

Consultant acknowledges that the terms and conditions of Agreement No. \_\_\_\_\_ govern this Contract Task Order and that its signature below reflects its agreement with the terms and conditions of this Contract Task Order No. \_\_\_\_.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

ACCEPTED:

\_\_\_\_\_  
(Consultant Name)  
Date:

**Exhibit "C"**

**Notice to Proceed**

(Date)  
(Consultant)  
(Consultant address)  
(City, State, Zip)

Attention: (Project Manager)

Subject: Agreement No. \_\_\_\_\_  
Notice to Proceed – Contract Task Order No. \_\_\_\_  
Project Name

This is to notify and direct you to commence performance of the subject Contract Task Order No. \_\_\_\_\_. Enclosed is your set of the executed Contract Task Order documents.

If you have any questions, please contact \_\_\_\_\_ at (562) 247-\_\_\_\_\_.

Very truly yours,

Mike Leue  
ACTA Chief Executive Officer

Enclosure: Contract Task No. \_\_\_\_

# **EXHIBIT D**

## **COMPENSATION**

For those items of the Scope of Work for which compensation is payable in fixed fee amounts, payment to the Consultant shall be made in accordance with the compensation schedule as set forth in a Contract Task Order ("CTO"), and the percentage of completion of each phase of the Scope of Work, as determined and approved by ACTA's CEO and based upon monthly progress reports submitted by the Consultant. Monthly progress payments shall be equal to the percentage of completion of each phase multiplied by the fixed fee payable for completion of each phase, less amounts previously billed.

For those items of the Scope of Work for which compensation is payable in not-to-exceed amounts, the Consultant shall be paid an hourly fee as defined in Section 5.3 of this Agreement, at the rates set forth herein and in accordance with the compensation schedule as set forth in a CTO. The Consultant's monthly invoice shall itemize all hours actually worked in performing such services, identifying the personnel and sub-consultant classifications of individuals performing work under a CTO, and the applicable hourly rates according to this Exhibit D.



**Moffatt & Nichol ACTA On-Call Rates****M&N Audited Overhead Rate** 179.80%**Profit** 8.00%**Multiplier** 3.02

| <b>Name / General Classification</b> | <b>Salaried Rate</b> | <b>Fully Burdened Rate</b> | <b>Contract Rate</b> |
|--------------------------------------|----------------------|----------------------------|----------------------|
| Jim McCluskie                        | \$163.54             | \$493.89                   | \$375.00             |
| Phil Balmeo                          | \$121.14             | \$365.84                   | \$365.84             |
| Dick Steinke                         | \$114.50             | \$345.79                   | \$345.79             |
| Pierce Homer                         | \$144.11             | \$435.21                   | \$375.00             |
| Sam Mansour                          | \$157.54             | \$475.77                   | \$375.00             |
| Jorge Pantoja                        | \$91.89              | \$277.51                   | \$277.51             |
| Keith Gillfillan                     | \$130.05             | \$392.75                   | \$375.00             |
| Omar Jaradat                         | \$157.54             | \$475.77                   | \$375.00             |
| Chace Hulon                          | \$92.66              | \$279.83                   | \$279.83             |
| Scott Hudson                         | \$125.00             | \$377.50                   | \$375.00             |
| Amr Zaher                            | \$92.69              | \$279.92                   | \$279.92             |
| Kamran Kermani                       | \$101.52             | \$306.59                   | \$306.59             |
| Ari Konyalian                        | \$98.58              | \$297.71                   | \$297.71             |
| Tom Poyer                            | \$97.59              | \$294.72                   | \$294.72             |
| Steven Carson                        | \$61.70              | \$186.33                   | \$186.33             |
| Jason Field                          | \$82.00              | \$247.64                   | \$247.64             |
| Jorge Felix                          | \$51.82              | \$156.50                   | \$156.50             |
| Kerry Simpson                        | \$144.46             | \$436.27                   | \$375.00             |
| Rob Martinez                         | \$192.13             | \$580.23                   | \$375.00             |
| Staff Engineer                       | \$44.26              | \$133.67                   | \$133.67             |
| Project Controls/Word Processing     | \$39.73              | \$119.98                   | \$119.98             |
| CADD I                               | \$34.25              | \$103.44                   | \$103.44             |
| Designer                             | \$59.75              | \$180.45                   | \$180.45             |

**Note:**

Multiplier is locked for 5-year term of contract.

Rates capped at \$375/hr. Cap allowed increase of up to 3% per year for life of contract.

5% Markup on Subconsultants

0% Markup on Other Direct Costs

No reimbursement for local travel or meals.

Travel for specialized experts will not be reimbursed without prior authorization from ACTA.



**BILILING RATES  
ON-ALL ENGINEERING SERVICES FOR ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY**

|                            |                                    |
|----------------------------|------------------------------------|
| <b>Prime Firm:</b>         |                                    |
| <b>Subconsultant Firm:</b> | <b>ANIL VERMA ASSOCIATES, INC.</b> |

| <b>Classification</b>                | <b>Hourly Rate<br/>FY2024</b> | <b>Hourly Rate<br/>FY2025</b> | <b>Hourly Rate<br/>FY2026</b> | <b>Hourly Rate<br/>FY2027</b> |
|--------------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Principal-in-Charge                  | \$417.73                      | \$434.43                      | \$451.81                      | \$469.88                      |
| Associate Principal                  | \$363.83                      | \$378.38                      | \$393.51                      | \$409.25                      |
| Senior Project Manager               | \$363.83                      | \$378.38                      | \$393.51                      | \$409.25                      |
| Project Manager                      | \$282.98                      | \$294.29                      | \$306.07                      | \$318.31                      |
| Lead Architect                       | \$280.28                      | \$291.49                      | \$303.15                      | \$315.28                      |
| Project Architect                    | \$229.08                      | \$238.24                      | \$247.77                      | \$257.68                      |
| Sr. Architect III / Sr. Engineer III | \$218.30                      | \$227.03                      | \$236.11                      | \$245.55                      |
| Sr. Architect II / Sr. Engineer II   | \$202.13                      | \$210.21                      | \$218.62                      | \$227.36                      |
| Sr. Architect I / Sr. Engineer I     | \$188.65                      | \$196.20                      | \$204.04                      | \$212.21                      |
| Architect III/Sr. Designer III       | \$175.18                      | \$182.18                      | \$189.47                      | \$197.05                      |
| Architect II/Sr. Designer II         | \$161.70                      | \$168.17                      | \$174.89                      | \$181.89                      |
| Architect I/Sr. Designer I           | \$148.23                      | \$154.15                      | \$160.32                      | \$166.73                      |
| CAD Manager/BIM Manager              | \$175.18                      | \$182.18                      | \$189.47                      | \$197.05                      |
| CAD / BIM III                        | \$148.23                      | \$154.15                      | \$160.32                      | \$166.73                      |
| CAD / BIM II                         | \$134.75                      | \$140.14                      | \$145.75                      | \$151.58                      |
| CAD / BIM I                          | \$121.28                      | \$126.13                      | \$131.17                      | \$136.42                      |
| Sr. Estimator                        | \$256.03                      | \$266.27                      | \$276.92                      | \$287.99                      |
| Specifications                       | \$202.13                      | \$210.21                      | \$218.62                      | \$227.36                      |
| Sr. QA/QC Manager                    | \$363.83                      | \$378.38                      | \$393.51                      | \$409.25                      |
| QA/QC                                | \$202.13                      | \$210.21                      | \$218.62                      | \$227.36                      |
| Clerical Support                     | \$121.28                      | \$126.13                      | \$131.17                      | \$136.42                      |

**Notes:** The above billing rates include 145% Overhead Rates and 10% Fee. There is an annual merit increase of 4% per year. The above rates don't include other direct costs such as travel, mileages, parking, printing, permit fee, etc.



Arellano Associates 2024 Rate Schedule

|                         |         |
|-------------------------|---------|
| Audited Overhead Rate = | 132.46% |
| Profit Margin =         | 10.00%  |

| BILLING INFORMATION  |                      |           |         | CALCULATION INFORMATION       |            |                     |                  |
|--|----------------------|-----------|---------|-------------------------------|------------|---------------------|------------------|
| Name/Job Title/Classification1   | Hourly Billing Rates |           |         | Effective Date of Hourly Rate |            | Maximum Hourly Rate | % or \$ Increase |
|  | Straight             | OT (1.5x) | OT (2x) | From                          | To         |                     |                  |
| Principal-in-Charge<br><br>(Overtime Exempt)   | 306.85               | NA        | NA      | 01/01/24                      | 12/31/2024 | 120.00              |                  |
|  | 319.12               | NA        | NA      | 01/02/25                      | 12/31/2025 | 124.80              | 4%               |
|  | 331.88               | NA        | NA      | 01/03/26                      | 12/31/2026 | 129.79              | 4%               |
|  | 345.15               | NA        | NA      | 01/04/27                      | 12/31/2027 | 134.98              | 4%               |
| Senior Project Manager<br><br>(Overtime Exempt)  | 255.71               | NA        | NA      | 01/01/24                      | 12/31/2024 | 100.00              |                  |
|  | 265.93               | NA        | NA      | 01/02/25                      | 12/31/2025 | 104.00              | 4%               |
|  | 276.57               | NA        | NA      | 01/03/26                      | 12/31/2026 | 108.16              | 4%               |
|  | 287.64               | NA        | NA      | 01/04/27                      | 12/31/2027 | 112.49              | 4%               |
| Project Manager/Tech Operations Manager<br><br>(Overtime Exempt)                             | 191.78               | NA        | NA      | 01/01/24                      | 12/31/2024 | 75.00               |                  |
|  | 197.53               | NA        | NA      | 01/02/25                      | 12/31/2025 | 77.25               | 4%               |
|  | 203.47               | NA        | NA      | 01/03/26                      | 12/31/2026 | 79.57               | 4%               |
|  | 209.58               | NA        | NA      | 01/04/27                      | 12/31/2027 | 81.96               | 4%               |
| Deputy Project Manager/ Leads (Media, Tech, Creative)<br><br>(Overtime Exempt)               | 166.21               | NA        | NA      | 01/01/24                      | 12/31/2024 | 65.00               |                  |
|  | 172.86               | NA        | NA      | 01/02/25                      | 12/31/2025 | 67.60               | 4%               |
|  | 179.76               | NA        | NA      | 01/03/26                      | 12/31/2026 | 70.30               | 4%               |
|  | 186.95               | NA        | NA      | 01/04/27                      | 12/31/2027 | 73.11               | 4%               |
| Senior Project Coordinator (including Tech, Media, Creative)<br><br>(Overtime Exempt)        | 140.64               | NA        | NA      | 01/01/24                      | 12/31/2024 | 55.00               |                  |
|  | 146.26               | NA        | NA      | 01/02/25                      | 12/31/2025 | 57.20               | 4%               |
|  | 152.12               | NA        | NA      | 01/03/26                      | 12/31/2026 | 59.49               | 4%               |
|  | 158.21               | NA        | NA      | 01/04/27                      | 12/31/2027 | 61.87               | 4%               |
| Project Coordinator (including Tech, Media, Creative)<br><br>(Overtime Non-Exempt)           | 102.28               | 153.42    | 204.56  | 01/01/24                      | 12/31/2024 | 40.00               |                  |
|  | 106.37               | 159.56    | 212.74  | 01/02/25                      | 12/31/2025 | 41.60               | 4%               |
|  | 110.62               | 165.93    | 221.24  | 01/03/26                      | 12/31/2026 | 43.26               | 4%               |
|  | 115.04               | 172.56    | 230.08  | 01/04/27                      | 12/31/2027 | 44.99               | 4%               |
| Assistant Project Coordinator (including Tech, Media, Creative)<br><br>(Overtime Non-Exempt) | 76.71                | 115.07    | 153.42  | 01/01/24                      | 12/31/2024 | 30.00               |                  |
|  | 79.78                | 119.67    | 159.56  | 01/02/25                      | 12/31/2025 | 31.20               | 4%               |
|  | 82.98                | 124.47    | 165.96  | 01/03/26                      | 12/31/2026 | 32.45               | 4%               |
|  | 86.30                | 129.45    | 172.60  | 01/04/27                      | 12/31/2027 | 33.75               | 4%               |





| ROSTER OF EMPLOYEES          |            |          |          |               |          |          |
|------------------------------|------------|----------|----------|---------------|----------|----------|
| Class Title                  | Base Rates |          |          | Billing Rates |          |          |
|                              | Year 1     | Year 2   | Year 3   | Year 1        | Year 2   | Year 3   |
| SME                          | \$115.00   | \$119.03 | \$123.19 | \$400.78      | \$414.80 | \$429.32 |
| Principal Engineer           | \$79.00    | \$81.77  | \$84.63  | \$275.32      | \$284.95 | \$294.92 |
| Associate Principal Engineer | \$79.00    | \$81.77  | \$84.63  | \$275.32      | \$284.95 | \$294.92 |
| Senior Engineer              | \$63.00    | \$65.21  | \$67.49  | \$219.56      | \$227.24 | \$235.19 |
| Ropes Access Supervisor      | \$52.00    | \$53.82  | \$55.70  | \$181.22      | \$187.56 | \$194.13 |
| Engineer                     | \$53.00    | \$54.86  | \$56.77  | \$184.71      | \$191.17 | \$197.86 |
| Senior Analyst               | \$45.00    | \$46.58  | \$48.21  | \$156.83      | \$162.31 | \$167.99 |
| Staff Engineer               | \$41.00    | \$42.44  | \$43.92  | \$142.89      | \$147.89 | \$153.06 |
| Analyst                      | \$37.00    | \$38.30  | \$39.64  | \$128.95      | \$133.46 | \$138.13 |
| Graduate Engineer            | \$31.00    | \$32.09  | \$33.21  | \$108.04      | \$111.82 | \$115.73 |
| Senior Technician            | \$31.00    | \$32.09  | \$33.21  | \$108.04      | \$111.82 | \$115.73 |
| Technician                   | \$30.00    | \$31.05  | \$32.14  | \$104.55      | \$108.21 | \$112.00 |
| Controller                   | \$90.00    | \$93.15  | \$96.41  | \$313.65      | \$324.63 | \$335.99 |
| Administrative               | \$35.00    | \$36.23  | \$37.49  | \$121.98      | \$126.24 | \$130.66 |

Hatch 74018



ACTA On-Call Engineering Services

Rate Schedule

|  | Year 1              | Year 2              | Year 3              |
|--|---------------------|---------------------|---------------------|
| <i>Name &amp; Title</i>  | Fully Burdened Rate | Fully Burdened Rate | Fully Burdened Rate |
| Michael Samario / Senior Specialist, Rail Operations & Simulations | \$114.41            | \$120.13            | \$126.13            |
| Eric Vaillancourt / Director, Rail and Transit                     | \$177.76            | \$186.65            | \$195.98            |
| Chris Hitchcock / Rail Operations Analyst                          | \$128.23            | \$134.65            | \$141.38            |
| Daniel Hartung / Rail Equipment/Facilities Commissioning           | \$234.95            | \$246.70            | \$259.03            |
| Kevin Heidrich / Rail Equipment/Facilities Commissioning           | \$241.67            | \$253.76            | \$266.45            |

\* The above listed rates are fully burdened, inclusive of salary, overhead, and profit

\*\* Year 1 is assumed as June 2024 through May 2025



21660 Copley Drive, Suite 270  
 Diamond Bar, CA 91765-4177  
 Tel:(909) 396-6850 Fax:(909) 396-8150  
 E-mail: inbox@LinConsulting.com

### **LIN Consulting Fee Schedule for FY 2024**

| <b>Classifications</b> | <b>Category Rates</b>       | <b>Overhead Rate for FY2023</b> | <b>Profit</b> | <b>Loaded Rates</b>   |
|------------------------|-----------------------------|---------------------------------|---------------|-----------------------|
| Principal-In-Charge    | Range [\$101.00 - \$101.00] | 180%                            | 10%           | \$ 311.08 - \$ 311.08 |
| Sr. Project Manager    | Range [\$76.00 - \$84.00]   | 180%                            | 10%           | \$ 234.08 - \$ 258.72 |
| Asst. Project Manager  | Range [\$46.50 - \$54.00]   | 180%                            | 10%           | \$ 143.22 - \$ 166.32 |
| Sr. Engineer           | Range [\$54.00 - \$68.00]   | 180%                            | 10%           | \$ 166.32 - \$ 209.44 |
| Project Engineer       | Range [\$28.50 - \$42.00]   | 180%                            | 10%           | \$ 87.78 - \$ 129.36  |
| Assistant Engineer     | Range [\$20.00 - \$28.00]   | 180%                            | 10%           | \$ 61.60 - \$ 86.24   |
| Intern                 | Range [\$16.00 - \$20.00]   | 180%                            | 10%           | \$ 49.28 - \$ 61.60   |

The above rates are effective to December 31, 2024. After the date specified, the labor rates may be adjusted to compensate for labor adjustments and other increases in labor costs.

The cost of printing, mileage, mailing and other expenses incidental to the performance of the services are not included in the hourly rates and will be charged at actual cost.

---

*"providing professional services with the best value and quality; on time and within budget"*



2024 - 2026

| FARS w/ Fee<br>(01.01.2022 Raw X<br>211.29% + 12% Profit +<br>5% Escalation) |                 |        | FARS w/ Fee<br>(01.01.2022 Raw X<br>211.29% + 12% Profit +<br>5% Escalation) |                                   |                                      | FARS w/ Fee<br>(01.01.2022 Raw X<br>211.29% + 12% Profit +<br>5% Escalation) |                                      |                                      |
|--|-----------------|--------|--|-----------------------------------|--------------------------------------|--|--------------------------------------|--------------------------------------|
| 01/01/24-12/31/24  |                 |        | 01/01/25-12/31/25  |                                   |                                      | 01/01/26-12/31/26  |                                      |                                      |
| Multipliers  |                 |        | Multipliers  |                                   |                                      | Multipliers  |                                      |                                      |
| Classification   | Name            | Class  | Raw<br>Hourly Rate   | Hourly Raw<br>Rate with<br>5% Esc | OVR=<br>211.29%<br>Profit=<br>12.00% | Hourly Raw<br>Rate with<br>5% Esc  | OVR=<br>211.29%<br>Profit=<br>12.00% | OVR=<br>211.29%<br>Profit=<br>12.00% |
| Principal  | Lynn Capouya    | Salary | \$93.20  | \$ 97.86 \$                       | \$324.94                             | \$ 102.75 \$   | \$ 358.24                            |                                      |
| Senior Project Manager/Design Director                                       | Jane Cataldo    | Salary | \$72.13  | \$ 75.74 \$                       | \$251.48                             | \$ 79.52 \$  | \$ 277.25                            |                                      |
| Certified Irrigation Designer  | Cong Phui       | Salary | \$54.39  | \$ 57.11 \$                       | \$189.63                             | \$ 59.96 \$  | \$ 209.06                            |                                      |
| Sr. Project Manager  | Soda Pay        | Salary | \$56.06  | \$ 58.86 \$                       | \$195.45                             | \$ 61.81 \$  | \$ 215.48                            |                                      |
| Sr. Project Manager  | Erwin Gutierrez | Salary | \$52.37  | \$ 54.99 \$                       | \$182.59                             | \$ 57.74 \$  | \$ 201.30                            |                                      |
| Sr. Project Manager  | Kevin Yamachika | Salary | \$53.60  | \$ 56.28 \$                       | \$186.87                             | \$ 59.09 \$  | \$ 206.03                            |                                      |
| Project Manager / Landscape Architect  | Patricia Lear   | Salary | \$48.08  | \$ 50.48 \$                       | \$167.63                             | \$ 53.01 \$  | \$ 184.81                            |                                      |
| Design Staff II  | Adriel Saravia  | Hourly | \$30.00  | \$ 31.50 \$                       | \$104.59                             | \$ 33.08 \$  | \$ 115.31                            |                                      |
| Design Staff I   | TBD             | Hourly | \$25.00  | \$ 26.25 \$                       | \$87.16                              | \$ 27.56 \$  | \$ 96.10                             |                                      |
| Administration   | Gina Ortega     | Hourly | \$63.48  | \$ 66.65 \$                       | \$221.32                             | \$ 232.39 \$   | \$ 244.00                            |                                      |





**FIRM:** MA Engineering  
**DATE:** 1/17/2023

|                         |                         |                |  |                        |  |
|-------------------------|-------------------------|----------------|--|------------------------|--|
| <b>STRAIGHT</b>         |                         | <b>General</b> |  | <b>Indirect Rate %</b> |  |
| <b>Fringe Benefit %</b> | <b>Administrative %</b> | <b>=</b>       |  | <b>114.90%</b>         |  |
| 52.94%                  | 61.96%                  |                |  |                        |  |
|                         |                         | <b>Fee</b>     |  | <b>8.00%</b>           |  |



| Employee Name       | Classification       | License # (if applicable) | Loaded Hourly Billing Rates | Loaded Hourly Billing Rates OT | Actual Hourly Rate |  |
|---------------------|----------------------|---------------------------|-----------------------------|--------------------------------|--------------------|--|
| Javier Tiscareno    | Sr. Project Engineer | C81784                    | \$ 220.49                   | N/C                            | \$ 95.00           |  |
| Cesar Tiscareno     | Sr. Project Engineer | C79951, TE2947            | \$ 208.88                   | N/C                            | \$ 90.00           |  |
| Lilian Yuen         | Sr. Project Engineer | C87385                    | \$ 197.28                   | N/C                            | \$ 85.00           |  |
| Ron Mones           | Sr. Project Engineer | C75506                    | \$ 197.28                   | N/C                            | \$ 85.00           |  |
| Michael Tablan      | Project Engineer     | C89051                    | \$ 150.86                   | N/C                            | \$ 65.00           |  |
| Josue Silva         | Project Engineer     |                           | \$ 127.65                   | N/C                            | \$ 55.00           |  |
| Annette Marinez     | Engineer II          |                           | \$ 111.40                   | N/C                            | \$ 48.00           |  |
| Victor Mendoza      | Engineer II          |                           | \$ 106.76                   | N/C                            | \$ 46.00           |  |
| Arman Raghebi       | Engineer II          |                           | \$ 104.44                   | N/C                            | \$ 45.00           |  |
| Jason Pham          | Engineer II          |                           | \$ 104.44                   | N/C                            | \$ 45.00           |  |
| Mohammed Al-Askari, | Engineer I           |                           | \$ 91.68                    | N/C                            | \$ 39.50           |  |
| Diana Melendez      | Engineer I           |                           | \$ 91.68                    | N/C                            | \$ 39.50           |  |
| Belinda Liu         | Engineer I           |                           | \$ 81.23                    | N/C                            | \$ 35.00           |  |
|                     |                      |                           | \$ -                        | N/C                            |                    |  |
|                     |                      |                           | \$ -                        | N/C                            |                    |  |
|                     |                      |                           | \$ -                        | N/C                            |                    |  |
|                     |                      |                           | \$ -                        | N/C                            |                    |  |



**Alameda Corridor Transportation Authority (ACTA)  
ON-CALL ENGINEERING SERVICES Hourly Rates & Pricing**

| Firm            | Prime | Sub | Last Name <sup>1</sup> | First Name | Discipline/Classification | Base Hourly Rate | Exempt or Non-Exempt | Overhead Rate | Profit/Fee | Fully Burdened Rate |
|-----------------|-------|-----|------------------------|------------|---------------------------|------------------|----------------------|---------------|------------|---------------------|
| ABC Consulting  | x     |     | Jones                  | Bob        | Planner                   | \$ 54.65         | Non-Ex               | 159.66%       | 10.00%     | \$ 156.09           |
| XYZ Consultant  |       | x   | Smith                  | James      | Planner, Assistant        | \$ 38.00         | Exempt               | 148.17%       | 10.00%     | \$ 103.74           |
| RSE Corporation |       | x   | Maxey                  | Darrell    | Engineer III              | \$ 125.00        | Exempt               | 124.76%       | 10%        | \$ 309.05           |
| RSE Corporation |       | x   | Susanto                | Bernard    | Engineer III              | \$ 115.00        | Exempt               | 124.76%       | 10%        | \$ 284.32           |
| RSE Corporation |       | x   |                        |            | Principal Manager         | \$ 135.00        | Exempt               | 124.76%       | 10%        | \$ 333.77           |
| RSE Corporation |       | x   |                        |            | Engineer III              | \$ 125.00        | Exempt               | 124.76%       | 10%        | \$ 309.05           |
| RSE Corporation |       | x   |                        |            | Engineer II               | \$ 85.00         | Exempt               | 124.76%       | 10%        | \$ 210.15           |
| RSE Corporation |       | x   |                        |            | Engineer I                | \$ 50.00         | Exempt               | 124.76%       | 10%        | \$ 123.62           |
| RSE Corporation |       | x   |                        |            | Survey Manager            | \$ 115.00        | Exempt               | 124.76%       | 10%        | \$ 284.32           |
| RSE Corporation |       | x   |                        |            | Engineer Technician III   | \$ 90.00         | Exempt               | 124.76%       | 10%        | \$ 222.51           |
| RSE Corporation |       | x   |                        |            | Engineer Technician II    | \$ 75.00         | Non-Ex               | 124.76%       | 10%        | \$ 185.43           |
| RSE Corporation |       | x   |                        |            | Engineer Technician I     | \$ 55.00         | Non-Ex               | 124.76%       | 10%        | \$ 135.98           |
| RSE Corporation |       | x   |                        |            | Admin III                 | \$ 90.00         | Exempt               | 124.76%       | 10%        | \$ 222.51           |
| RSE Corporation |       | x   |                        |            | Admin II                  | \$ 60.00         | Exempt               | 124.76%       | 10%        | \$ 148.34           |
| RSE Corporation |       | x   |                        |            | Admin I                   | \$ 40.00         | Exempt               | 124.76%       | 10%        | \$ 98.89            |

**Instructions/Notes:**

1. List proposed staff in alphabetical order THEN include any "general" classifications with "TBD" for the staff name
2. Base Hourly Rate = unburdened hourly rate
3. Overhead Rate as a percentage
4. Fee = Fee/Profit as a percentage of Direct Labor Costs
5. Fully-burdened hourly rate = (BHR+(BHR\*OVERHEAD))\*(1+FEE) (This is automatically calculated)

Transportation Analytic Services

| Employee Name | Classification  | Hourly Rates |
|---------------|-----------------|--------------|
| Jack Fuller   | Sole Proprietor | \$170        |



Hourly Rates and Pricing

| Employee name       | Hourly rate | Audited OH | Profit | Billing rate |
|---------------------|-------------|------------|--------|--------------|
| Kevin Villarama, PE | \$60        | 183.45 %   | 10%    | \$186.60     |
| Jose Varias         | \$98        | 183.45 %   | 10%    | \$304.78     |





# Earth Mechanics, Inc.

Geotechnical & Earthquake Engineering

| EARTH MECHANICS, INC.<br>BILLING RATES 2024 |              |           |           |
|---|--------------|-----------|-----------|
| Classification                              | Billing Rate |           |           |
|   | HOURLY       | OT (x1.5) | OT (x2.0) |
| Principal                                   | \$ 303.00    |           |           |
| Principal Engineer/Geologist                | \$ 302.00    |           |           |
| Senior Engineer/Geologist                   | \$ 224.00    |           |           |
| Senior Project Engineer/Geologist           | \$ 204.00    |           |           |
| Project Engineer/Geologist                  | \$ 174.00    |           |           |
| Senior Staff Engineer/Geologist             | \$ 153.00    |           |           |
| Staff Engineer/Geologist                    | \$ 134.00    |           |           |
| Senior Technician                           | \$ 156.00    |           |           |
| Technician Non-PW (non-exempt)*             | \$ 81.00     | \$ 121.50 | \$ 162.00 |
| Administrative Assistants (non-exempt)*     | \$ 147.00    | \$ 220.50 | \$ 294.00 |

*\*Non-exempt: subject to overtime pay per California law.  
Exempt staff are paid hourly for additional hours worked.*

*Reimbursable expenses including, but not limited to, drilling, traffic control, waste disposal, specialty testing, and private utility location services will be reimbursed at actual cost with supporting invoice.*

*Charges invoiced to ACTC for travel, lodging, and subsistence shall not exceed the current Caltrans rates.*

*Billing Multiplier Applied to Base Rate (170.68% OH & 10% fee)*

*Annual Escalation = 5%*

EXHIBIT E

Company Letterhead

Agreement No.:  
TIN:

Invoice Number:  
Date:  
ACTA PM:

Task number, Project Title  
Billing Period: Month/Day/Year to Month/Day/Year

|                      |                 |                  |            |
|----------------------|-----------------|------------------|------------|
| Authorized PD Budget | Current Invoice | Invoiced To-Date | PD Balance |
| \$0.00               | \$0.00          | \$0.00           | \$0.00     |

| PERSONNEL:        | Rate/Hour | Current Hours | Cumulative Hours | Current Total |
|-------------------|-----------|---------------|------------------|---------------|
| Name & Title      | \$0.00    | 0             | 0                | \$0.00        |
| "                 | \$0.00    | 0             | 0                | \$0.00        |
| "                 | \$0.00    | 0             | 0                | \$0.00        |
| "                 | \$0.00    | 0             | 0                | \$0.00        |
| "                 | \$0.00    | 0             | 0                | \$0.00        |
| "                 | \$0.00    | 0             | 0                | \$0.00        |
| Total Labor Cost: |           |               |                  | \$0.00        |

| SUBCONSULTANT:            | Activity       | Current Total |
|---------------------------|----------------|---------------|
| Name of Subconsultant     | Work Performed | \$0.00        |
| "                         |                | \$0.00        |
| "                         |                | \$0.00        |
| "                         |                | \$0.00        |
| Total Subconsultant Cost: |                | \$0.00        |

| REIMBURSABLE EXPENSES:                                   | Current<br>Total |
|--|------------------|
| Mileage, Parking, Car Rentals, Reproduction/Copies, etc. | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| "  | \$0.00           |
| <b>Total Other Direct Cost:</b>                          |                  |
|  | <b>\$0.00</b>    |

REMIT PAYMENT TO:  
Company Name  
Address  
City, ST Zip

TOTAL AMOUNT NOW DUE: \$0.00

Progress Report: Describe the work undertaken during this billing period. Identify accomplishments and challenges encountered. Provide other info as appropriate.

I certify under penalty of perjury that the above bill is just and correct according to the terms of Agmt #\_\_\_\_\_ and that payment has not been received.

\_\_\_\_\_  
Consultant Representative Name

\_\_\_\_\_  
Date:  
APPROVED AS TO SCOPE AND  
AMOUNT OF WORK PERFORMED  
\_\_\_\_\_  
ACTA PROJECT MANAGER

**Exhibit F**

**ALAMEDA CORRIDOR**  
**MONTHLY SUBCONTRACTOR MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of \_\_\_\_\_ for the referenced contract number.

Contract No. \_\_\_\_\_

Start Date \_\_\_\_\_

End Date \_\_\_\_\_

Committed SBE Participation Percentage \_\_\_\_\_

|    | Name of Subcontractor | Work Performed | Certifications: *<br>SBE/V/SBE/MBE/WBE/OBE/DVBE | PROPOSED                               | ACTUALS                   |                        |  | Overall Contract<br>Amount<br>Percentage<br>(Paid to Date) |
|----|-----------------------|----------------|---|--|---------------------------|------------------------|--|--|
|    |                       |                |   | Original<br>Proposed SBE<br>Percentage | Amount Paid<br>This Month | Amount Paid<br>to Date |  |  |
| 1  |                       |                |   |  |                           |                        |  |  |
| 2  |                       |                |   |  |                           |                        |  |  |
| 3  |                       |                |   |  |                           |                        |  |  |
| 4  |                       |                |   |  |                           |                        |  |  |
| 5  |                       |                |   |  |                           |                        |  |  |
| 6  |                       |                |   |  |                           |                        |  |  |
| 7  |                       |                |   |  |                           |                        |  |  |
| 8  |                       |                |   |  |                           |                        |  |  |
| 9  |                       |                |   |  |                           |                        |  |  |
| 10 |                       |                |   |  |                           |                        |  |  |

\* Indicate all certifications held by each subcontractor

## EXHIBIT G

### **SMALL BUSINESS ENTERPRISE PROGRAM**

The Alameda Corridor Transportation Authority ("ACTA") is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at ACTA. ACTA's Small Business Enterprise (SBE) Program was created to provide opportunities for small businesses to participate in professional service and construction contracts. It is the policy of ACTA to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows ACTA to target small business participation, including MBEs, WBEs, and DVBES, more effectively.

An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this Agreement, it has been determined that the percentage of required small business participation will be 0%.**

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement, where required, and for reporting to ACTA. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs.



AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to ACTA, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

**Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

☐SBE    ☐VSBE    ☐MBE    ☐WBE    ☐DVBE    ☐OBE

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date Signed \_\_\_\_\_

NOTARY

STATE OF CALIFORNIA       )  
  ) ss  
COUNTY OF LOS ANGELES   )

Place Notary Seal and/or Stamp Above

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

(1) \_\_\_\_\_  
Name of Signer (1)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and)

(2) \_\_\_\_\_  
Name of Signer (2)

Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature \_\_\_\_\_

## Contractor Description Form

**For the Prime Contractor and each Subcontractor, state the type of SBE certification claimed and, if available, return documentation with this form to ACTA evidencing the declared SBE certification.**

### PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_

Contract Title: \_\_\_\_\_

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
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Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_



City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_ FAX: (     ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_











# C0921-Moffatt-Nichol On-call Engineering Services Agreement

Final Audit Report

2024-05-30

|                 |  |
|-----------------|--|
| Created:        | 2024-05-28                                   |
| By:             | Sharon Wagner (wagner@trenchteam.com)        |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAxC7k1T-iPJUT-CHg-3iePh1i7qU4EgXR |

## "C0921-Moffatt-Nichol On-call Engineering Services Agreement" History

-  Document created by Sharon Wagner (wagner@trenchteam.com)  
2024-05-28 - 11:59:58 PM GMT
-  Document emailed to Heather McCloskey (hmcloskey@portla.org) for signature  
2024-05-29 - 0:02:49 AM GMT
-  Email viewed by Heather McCloskey (hmcloskey@portla.org)  
2024-05-29 - 2:37:46 PM GMT
-  Document e-signed by Heather McCloskey (hmcloskey@portla.org)  
Signature Date: 2024-05-29 - 2:38:50 PM GMT - Time Source: server
-  Document emailed to Michael Leue (mleue@acta.org) for signature  
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2024-05-30 - 3:03:58 AM GMT
-  Email viewed by Maria Melendres (mmelendres@acta.org)  
2024-05-30 - 3:38:39 PM GMT
-  Document e-signed by Maria Melendres (mmelendres@acta.org)  
Signature Date: 2024-05-30 - 3:38:50 PM GMT - Time Source: server
-  Agreement completed.  
2024-05-30 - 3:38:50 PM GMT

Transmittal 4

Use Permit

20080 04 01 000

0165407

HARBOR DEPARTMENT  
AGREEMENT 2020  
CITY OF LOS ANGELES

USE PERMIT

BY AND BETWEEN

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

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

AND

ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY



20010 04 01 000  
0165406

HARBOR DEPARTMENT  
AGREEMENT 2020  
CITY OF LOS ANGELES

USE PERMIT

BY AND BETWEEN

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

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

AND

ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY

# USE PERMIT

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- Exhibit B - Operating Agreement
- Exhibit C - Amended and Restated Construction and Maintenance Agreement (Union Pacific Railroad Company)
- Exhibit D - Right of Entry and Construction Agreement (The Burlington Northern and Santa Fe Railway Company)



## USE PERMIT

This Use Permit (the "**Permit**") is made and entered into as of OCTOBER 12  
\_\_\_\_\_, 1998 by and between THE CITY OF LOS ANGELES, a municipal corporation duly organized and existing under its Charter and the Constitution and the laws of the State of California, acting by and through its Board of Harbor Commissioners ("**POLA**"), and THE CITY OF LONG BEACH, a municipal corporation duly organized and existing under its Charter and the Constitution and the laws of the State of California, acting by and through its Board of Harbor Commissioners ("**POLB**", and together with POLA, "**Owner**"), on the one hand, and ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a joint powers authority created by the City of Los Angeles and the City of Long Beach in accordance with the laws of the State of California ("**ACTA**").

### RECITALS:

A. Owner, POLB or POLA has acquired certain interests in real property as shown on the map attached hereto as Exhibit A and by this reference incorporated herein (the "**Property**") for the purpose of constructing a high capacity railroad route approximately twenty (20) miles long. The Property expressly excludes subsurface mineral, oil, gas or water rights. Owner's, POLB's and POLA's interest in the Property is fee title with respect to certain portions of the Property and easements or other acquired rights covering certain other portions of the Property.

B. ACTA is a joint powers authority created by POLA and POLB pursuant to California Government Code Sections 6500 *et seq.* Concurrently herewith, The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company (together, the "**Railroads**"), ACTA and Owner are entering into that certain Alameda Corridor Use and Operating Agreement (the "**Operating Agreement**") attached hereto as Exhibit B and by this reference incorporated herein.

C. In consideration for the right to use and occupy the Property and collect, hold and expend the revenues therefrom (other than the revenues referred to in Recital E hereof), ACTA will: (i) obtain and provide for the financing necessary to construct the "**Project**" (as defined in the Operating Agreement), (ii) cause the Project to be constructed and (iii) perform certain administrative duties with respect to the operation of the Rail Corridor, all as more particularly described in the Operating Agreement. Construction of the Project has commenced.

D. ACTA desires to use and occupy the Property and collect, hold and expend certain revenues therefrom, and to cause the Project to be constructed thereon.

E. It is the intent of the parties that management and operation of licenses, easements and permits regarding the Property, and regarding additional property of Owner previously acquired from the Railroads, including but not limited to that property known generally as the Union Pacific San Pedro Branch,

will be the subject of a separate agreement that the parties will endeavor to execute and deliver within one hundred twenty (120) days from the date hereof. Unless and until such separate agreement is executed and delivered, all revenues derived from such licenses, easements and permits shall continue to be collected by and belong to Owner.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

#### **ARTICLE 1: BASIC TERMS.**

This Article 1 contains the Basic Terms of the Permit. Other Articles and Sections of the Permit referred to in this Article 1 explain, define and expand the Basic Terms and are to be read in conjunction with the Basic Terms. In the event of any inconsistency between these Basic Terms and any other provision of this Permit, the provisions of these Basic Terms shall control. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Operating Agreement.

Section 1.1 **Commencement Date:** The last date on which this Permit has been executed by POLA, POLB and ACTA.

Section 1.2 **Permit Term:** The period of time commencing with the Commencement Date and terminating on the earlier of: (i) fifty (50) years after the Commencement Date, (ii) upon the cessation of existence of ACTA or (iii) upon the termination of the Operating Agreement; but in the case of (iii), only if any ACTA Financing has been fully paid or fully provided for.

Section 1.3 **Permitted Use:** (See Section 7.1) ACTA shall use the Property for: (i) construction and development of the Project, and those uses which are incidental to such construction and development and (ii) rail freight transportation, as more generally described in and as limited by the Operating Agreement, and for no other purpose whatsoever without Owner's prior written consent. Except as otherwise provided in this Permit, Owner intends for ACTA's Permitted Use of the Property to encompass all interests Owner acquired and currently holds in the Property.

Section 1.4 **Permit Fee.** (See Article 3) The Permit Fee shall be Ten Dollars (\$10) per year, as provided in Section 3.1, and shall be increased periodically pursuant to Section 3.2.

## **ARTICLE 2: POSSESSION AND DESCRIPTION OF PROPERTY; RIGHTS OF ACTA.**

Section 2.1 **Possession and Description.** Owner, as to portions of the Property owned jointly by POLA and POLB; and POLA and POLB, respectively, as to portions of the Property not jointly owned by POLA and POLB, hereby grant to ACTA the right to possession of the Property during the Permit Term to construct, maintain and operate the Project. The parties agree to supplement this Permit with a legal description for the Property at such time as such a legal description is available and agree to complete such legal description as soon as is reasonably practicable. If at any time during the Permit Term, the real property upon which the Project will be constructed is expanded or diminished, the parties agree to execute an amendment to this Permit to reflect the additional or diminished Property covered by this Permit. ACTA shall vacate the Property upon the expiration or earlier termination of this Permit. ACTA shall reimburse Owner for and indemnify, defend and hold harmless Owner against all damages incurred by Owner as a result of any delay by ACTA in vacating the Property. If ACTA does



not vacate the Property upon the expiration or earlier termination of the Permit and Owner thereafter accepts the Permit Fee from ACTA, ACTA's occupancy of the Property shall be on a month-to-month basis, subject to all of the terms of this Permit, and ACTA shall be liable to Owner for any damages occasioned thereby.

**Section 2.2 Rights of ACTA.** ACTA shall be entitled under the Operating Agreement to collect, hold, and expend all ACTA Revenues (it being understood that the revenues referred to in Recital E hereof do not comprise ACTA Revenues). To the extent set forth in the Operating Agreement, Owner disclaims any interest in the ACTA Revenues, and waives defenses to enforcement by ACTA of ACTA's claims thereto and agrees not to challenge ACTA's rights thereto. Owner agrees to take any and all action and execute any and all documents and instruments which may be necessary or which ACTA may reasonably request to further assure, confirm or accomplish the rights of ACTA described in this Section 2.1 and in this Permit.

### **ARTICLE 3: PERMIT FEE.**

**Section 3.1 Time and Manner of Payment.** Upon execution of this Permit, and on each anniversary of the Commencement Date during the Permit Term, ACTA shall pay equally to POLA and POLB, as Owner, one-half of the Permit Fee, in advance, without offset, deduction or prior demand. The Permit Fee shall be payable at Owner's address or at such other place as Owner may designate in writing.

**Section 3.2 Permit Fee Increases.** Commencing with the fifth anniversary of the Commencement Date of the Permit, and continuing every five (5) years thereafter (the "Adjustment Date"), the Permit Fee payable under Section 3.1 above shall be automatically adjusted proportionately by the increase, if any, in the Consumer Price Index for All Items, All

Urban Consumers for the Los Angeles-Anaheim-Riverside Area (1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**") which is for the month which is four (4) months prior to the fifth anniversary of the Commencement Date of the Permit ("**Beginning Index**"). The Index for the month which is four (4) months prior to each Adjustment Date ("**Extension Index**") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the yearly Permit Fee for the following five (5) years shall be set by multiplying the Permit Fee by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. In no event, however, shall the Permit Fee ever be less than the Permit Fee in effect immediately preceding the Adjustment Date.

Section 3.3     **Changes In The Index.** If the Index changes so that the base year of the Index differs from that used as of the Beginning Index, the Index shall be converted in accordance with the conversion factors published by the United States Department of Labor, Bureau of Labor Statistics. Should the Index be discontinued, or be published with such infrequency as to render the formulae in this Article 3 to be unworkable, or be altered in some other manner, then Owner and ACTA shall mutually adopt a substitute index or substitute procedure which reasonably reflects and monitors consumer prices. The substitute index must obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Section 3.4     **Notice of Adjusted Permit Fee.** Owner shall give ACTA not less than sixty (60) calendar days written notice of any adjustments to the Permit Fee, including the new amount and the calculations used to arrive at such amount. Failure or delay of Owner to give

such notice does not relieve ACTA from its obligation to pay an increased amount from the effective date of such adjustment, but ACTA may withhold the amount of any increase until such notice has been given, after which it shall retroactively pay the incremental difference.

#### **ARTICLE 4: OTHER CHARGES PAYABLE BY ACTA.**

##### **Section 4.1 Taxes.**

**4.1.1 Real Property Taxes.** As between ACTA and Owner, ACTA shall reimburse Owner for any Real Property Taxes (as defined below) assessed against the Property and for which one or both of the Railroads, Owner or some other third party is legally, contractually or otherwise liable and not paid by the Railroads or some other third party. "**Real Property Taxes**" means: (i) any fee, license fee, the license tax, levy, charge, assessment, penalty or tax imposed by any authority against the Property or against any person or entity concerning the Property or any portions thereof or any improvements thereon; (ii) any tax or charge for railroad service or maintenance, fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by any governmental agency, including the City of Los Angeles and/or the City of Long Beach; (iii) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change in ownership or transfer of all or part of Owner's interest in the Property and (iv) any charge or fee replacing any tax previously included within the definition of Real Property Taxes. If the Property is not separately assessed, ACTA shall pay a proportionate share of any Real Property Taxes. Nothing contained herein shall be deemed to relieve the Railroads of their obligations to pay Real Property Taxes pursuant to the Operating Agreement or pursuant to any constitutional, statutory, regulatory, judicial or any other applicable provision.

**4.1.2 Personal Property Taxes.** ACTA shall pay all taxes charged against improvements, trade fixtures, furnishings, equipment or any other personal property belonging to ACTA. ACTA shall seek to have personal property taxed separately from the Property. If any of ACTA's personal property is taxed with the Property, ACTA shall pay Owner the taxes for the personal property paid by Owner within fifteen (15) days after ACTA receives a written statement from Owner for such personal property taxes.

**4.1.3 License Fees and Taxes.** ACTA shall pay any and all taxes and assessments of whatever character levied upon or charged against the interest of ACTA, created by this Permit in the Property or upon works, structures, improvements or other property thereof, or upon ACTA's operations hereunder. ACTA shall also pay all license and permit fees required for the conduct of its operations hereunder.

**Section 4.2 Utilities.** ACTA shall arrange for installation of and shall pay for, directly to the appropriate suppliers and prior to delinquency, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal, cable and all other utilities and services supplied to the Property. If any services or utilities are jointly metered with other property, Owner shall make a reasonable determination of ACTA's proportionate share of the cost of such utilities and services, and ACTA shall pay such share to Owner within fifteen (15) days after receipt of Owner's written statement.

**Section 4.3 Insurance.** ACTA shall obtain and maintain in full force and effect all insurance required pursuant to the Operating Agreement, documents evidencing any ACTA Financing and the Construction Agreements (as defined in Section 6.1 hereof). All insurance required under this Permit shall comply with the following requirements:



(i) ACTA shall promptly deliver to Owner copies of policies of such insurance and original certificates evidencing such insurance;

(ii) No such policy shall be cancelable or subject to reduction of coverage or other modification except after sixty (60) days' prior written notice to Owner;

(iii) ACTA shall, at least thirty (30) days prior to the expiration of such policies, furnish Owner with renewals or binders thereof, or Owner may order such insurance and charge the cost thereof to ACTA, which amount shall be payable by ACTA upon demand; and

(iv) Owner shall be named as additional insured on all of ACTA's insurance policies relating to the Property.

**ARTICLE 5: CONDITION OF PROPERTY; HAZARDOUS SUBSTANCES; COMPLIANCE WITH REQUIREMENTS.**

Section 5.1 **Existing Conditions.** ACTA hereby acknowledges that it: (i) has satisfied itself with respect to the condition of the Property (including, but not limited to, security, environmental aspects, seismic and earthquake requirements), and compliance with applicable zoning, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record and the present and future suitability of the Property for ACTA's intended use; (ii) has made such investigations as it deems necessary with reference to such matters, is satisfied with reference thereto, and assumes all responsibility therefor as the same relate to ACTA's use of the Property pursuant to this Permit; (iii) accepts the Property in its "As-Is" condition and (iv) is not relying on any representations of Owner or any agent of Owner with

respect to the condition of the Property or the suitability of the Property for ACTA's intended use.

**Section 5.2 Reservations for Utilities, Streets and Prior Exceptions.** This Permit and ACTA's use of the Property pursuant thereto are and shall be at all times subject to the following: (i) rights-of-way of Owner or others for sewers, pipelines and conduits and for telephone, telegraph, cable, light, heat and power lines which do not cause permanent impairment of ACTA's operation or substantial interference with ACTA's carrying out of its duties hereunder or under the Operating Agreement, as may from time to time be determined to be reasonably necessary by Owner, including Owner's right to enter upon, above, below or through the surface of the Property or to grant to others the right to do so, to construct, maintain, replace, repair, enlarge or otherwise utilize the Property for such purposes, without compensation or abatement of the Permit Fee; (ii) rights-of-way for streets, highways and other means of transportation and (iii) all prior exceptions, reservations, restrictions, limitations, grants, easements, leases or licenses of any kind whatsoever as the same: (y) appear of record in the Office of the Recorder of Los Angeles County, California or (z) are set forth in the Interim Operating Agreement dated December 22, 1994, between Owner and Southern Pacific Transportation Company, the SPT Purchase Agreement, the UP Purchase Agreement or the ATSF Purchase Agreement.

**Section 5.3 Surrender of Property.** During the term of this Permit, all improvements constructed or to be constructed on the Property shall belong to ACTA. Upon the termination of this Permit, ACTA shall surrender the Property to Owner in good condition, except only ordinary wear and tear and matters which ACTA was not otherwise obligated to remedy under any provision of this Permit. All alterations, additions and improvements to the Property,

including the Project and all other fixtures, buildings, power wiring, power panels, gas or electrical facilities, equipment, fencing, security gates or other similar items, shall become Owner's property and shall be surrendered to Owner upon the termination of this Permit.

#### **Section 5.4 Hazardous Substances.**

**5.4.1 Definition of Hazardous Substances.** The term "**Hazardous Substance**" as used in this Permit shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity, either by itself or in combination with other materials expected to be on the Property, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Property; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Owner to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to any substance or material deemed hazardous or toxic pursuant to any other federal or state statute or regulation, including, but not limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof.

**5.4.2 Duty to Inform Owner.** Owner consents to the presence on the Property of Hazardous Substances to the extent permitted or contemplated by the Operating Agreement, subject to compliance with all Applicable Requirements (as defined in Section 5.5 hereof). If ACTA knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Property, other than previously consented to by Owner, or in the event of a Reportable Use (as hereinafter defined), ACTA shall immediately give Owner written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from,

any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance, including but not limited to all such documents as may be involved in any Reportable Use involving the Property. For purposes of this Permit, **"Reportable Use"** means (i) the installation or use of any above- or below-ground storage tanks; (ii) the generation, possession, storage, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on or about the Property of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Property, the Project or neighboring properties. ACTA shall cause to be conducted all such environmental assessment, remediation, removal and mitigation as Owner shall request with respect to the Property. ACTA shall account to Owner with respect to all work and expenditures for environmental assessment and remediation, removal and/or mitigation, such accounting to be in form and substance satisfactory to Owner. In particular, but not by way of limitation, all books, accounts and other records relating to such expenditures shall be subject to audit, examination and transcription by Owner, and ACTA agrees to retain all such books, accounts and records for a period of ten (10) years following the expiration of the term of this Permit.

**5.4.3 No Effect on Existing Agreements.** Nothing in this Section 5.4 is intended, or shall be deemed, to alter, modify or limit the provisions of existing agreements by, between and among POLA, POLB and/or one or more of the Railroads or their predecessors with respect to Hazardous Substances.



**Section 5.5 ACTA's Compliance with Requirements.** ACTA shall, at ACTA's sole cost and expense, fully, diligently and in a timely manner, comply with all Applicable Requirements. For purposes of this Permit, "**Applicable Requirements**" means all laws, charter provisions, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau and the recommendations of Owner's engineers and/or consultants, in each case relating in any manner to the Property, the Project or Owner, including but not limited to matters pertaining to: (i) industrial hygiene; (ii) environmental conditions on, in, under or about the Property, including soil and groundwater conditions or (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance. ACTA shall, within five (5) days after receipt of Owner's written request, provide Owner with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates evidencing ACTA's compliance with any Applicable Requirements, and shall immediately upon receipt notify Owner in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by ACTA, the Property or the Project to comply with any Applicable Requirements.

#### **ARTICLE 6: DUTIES OF ACTA.**

**Section 6.1 Construction of the Project and Utilities Relocation.** ACTA shall construct the Project in accordance with: (i) the Amended and Restated Construction and Maintenance Agreement of even date herewith by and among Union Pacific Railroad Company, ACTA and Owner attached hereto as Exhibit C and by this reference incorporated herein, (ii) the

Right of Entry and Construction Agreement dated of even date herewith by and among The Burlington Northern and Santa Fe Railway Company, ACTA and Owner attached hereto as Exhibit D and by this reference incorporated herein (together, the "**Construction Agreements**"), (iii) the Operating Agreement and (iv) the Master Trust Indenture, all as the same may be amended from time to time . ACTA agrees that it shall continuously and diligently prosecute construction of the Project to completion.

**Section 6.2 Maintenance Obligations.** Solely by reason of having executed that certain Assignment of Revenues between Owner and ACTA dated January 17, 1997, ACTA undertook no responsibility for the control, care, management, operation or repair of the Rail Corridor. However, pursuant to this Permit and the Operating Agreement, ACTA acknowledges that it has undertaken various obligations concerning construction and maintenance of the Rail Corridor.

**6.2.1 ACTA to Maintain and Repair.** ACTA shall have all maintenance and repair obligations with respect to the Property (together with all improvements, fixtures and equipment of any kind that shall be placed at any time on the Property, landscaped areas, portions, systems and equipment), all in accordance with and subject to the Operating Agreement and except to the extent the Railroads fulfill such obligations under the Operating Agreement, the Construction Agreements or any other agreement. Owner shall have absolutely no responsibility to repair, maintain or replace any portion of the Property at any time.

**6.2.2 Failure to Maintain and Repair.** If ACTA fails to maintain and/or repair the Property as required hereunder, Owner may (but shall not be obligated to), on thirty (30) days' prior notice (except that no notice shall be required in case of emergency), enter the

Property and perform such repair and/or maintenance on behalf of ACTA. In such case, ACTA shall reimburse Owner for all costs so incurred immediately upon demand.

**Section 6.3 Alterations, Additions and Improvements.**

**6.3.1 Requirements.** Any alterations, additions or improvements to the Property shall be performed in accordance with the Operating Agreement and all Applicable Requirements.

**6.3.2 No Liens.** ACTA shall pay when due all claims for labor and material furnished to the Property, and shall obtain appropriate releases and waivers of any and all claims and liens from any and all contractors in connection with any alterations, additions or improvements to the Property, except to the extent the Railroads fulfill such obligations under the Operating Agreement, the Construction Agreements or any other agreement. ACTA shall give Owner at least ten (10) days' written notice prior to the commencement of any work in, on or about the Property. Owner may elect to record and post notices of non-responsibility on the Property. Any contest by ACTA shall be at its sole cost and expense, and ACTA shall provide Owner with adequate security prior to any contest.

**6.3.3 Warranty.** ACTA guarantees all workmanship, equipment, materials and supplies used in connection with or incorporated in the improvements against all defects. Without limiting the foregoing, ACTA shall remedy any defects resulting from any breach of the foregoing guarantee. ACTA shall supply Owner with all warranty and guarantee documents relative to equipment, materials, supplies and workmanship incorporated into the Project and all improvements to the Property, and guaranteed by its suppliers or manufacturers. This warranty is in addition to and not in limitation of all other warranties provided at law or under any other provisions of this Permit.

Section 6.4 **Administrative and Related Duties.** ACTA shall: (i) obtain and provide for the financing necessary to construct the Project, (ii) collect, hold and expend ACTA Revenues, (iii) pay debt service on the Federal Loan and ACTA Financing and (iv) perform other management and administrative duties with respect to the Project, all subject to and as set forth in the Operating Agreement.

#### **ARTICLE 7: USE OF PROPERTY.**

Section 7.1 **Permitted Use; Manner of Use.** ACTA may use the Property only for such purposes as are consistent with the Permitted Use set forth in Section 1.3 above, and for no other purpose whatsoever without Owner's prior written consent. ACTA shall not cause or permit the Property to be used in any way which constitutes a violation of any Applicable Requirements, or which constitutes a nuisance or waste. ACTA shall obtain and pay for all licenses and permits required for ACTA's occupancy of the Property, and shall promptly take all actions necessary to comply with all Applicable Requirements.

Section 7.2 **Signs.** ACTA may place signs on the Property without Owner's consent, provided all such signs are consistent with the Permitted Use of the Property. The placement of any other signs shall be subject to Owner's prior written consent. Owner may place signs on the Property, provided such signs do not unreasonably interfere with ACTA's construction or operation of the Project.

Section 7.3 **Owner's Access; Inspection.** Owner and Owner's agents, employees and designated parties shall have the right, but not the obligation, to enter and inspect the Property at all reasonable times for any purpose Owner deems necessary. Owner shall give ACTA prior notice of such entry, except in the case of an emergency. The costs and expenses of any such

inspections shall be paid by the party requesting same, unless a Default of this Permit by ACTA or a violation of Applicable Requirements or a contamination, caused or materially contributed to by ACTA, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any alleged existing or imminent violation or contamination. In such case, ACTA shall reimburse Owner, upon request, for the costs and expenses of such inspections. Owner shall not be liable in any way to ACTA based on the exercise of its rights under this Section 7.3, except for damage caused by Owner's acts. In addition, Owner shall have the right from time to time to bring visitors to the Property for the purpose of showing them the Project and the operations conducted thereon, provided that such visitor entries shall not unreasonably interfere with ACTA's operations.

**Section 7.4 Additional Real Property Acquired Directly by ACTA.** The parties acknowledge that ACTA has directly acquired and may in the future acquire interests, in fee or otherwise, in or with respect to certain real property in addition to the Property that will be utilized for part of the Project. Upon Owner's request, at such time and in such manner as may be directed by Owner, ACTA shall convey such property to Owner by grant deed for no consideration; provided, however, that in the event that Owner requests such conveyance while any ACTA Financing remains outstanding, the property so conveyed shall become and thereafter shall be deemed to be Property subject to the provisions of this Permit.

## **ARTICLE 8: DAMAGE OR DESTRUCTION.**

**Section 8.1 Damage to Property.** ACTA shall notify Owner in writing immediately upon the occurrence of any damage or destruction to the Property or any improvements located thereon, including, but not limited to the Project. If the Property or any improvements located



thereon are destroyed or damaged, this Permit shall remain in full force and effect. ACTA shall repair the damage as soon as reasonably possible (except to the extent that the Railroads repair such damage), subject to and in accordance with the Operating Agreement and the Master Trust Indenture. Nothing contained herein shall obligate Owner to maintain any insurance on the Project or to rebuild the Project. If the Project is destroyed or damaged, the Permit Fee payable during the period of such damage, repair and/or restoration shall not be reduced, and ACTA shall not be entitled to any compensation, reduction or reimbursement from Owner as a result of any damage; destruction, repair or restoration of or to the Project.

**Section 8.2 Waiver of Termination Rights.** ACTA waives the protection of any statute, code or judicial decision which would grant it the right to terminate this Permit in the event of the substantial destruction of the Project.

## **ARTICLE 9: ASSIGNMENT.**

**Section 9.1 No Assignment by ACTA.** ACTA shall have the right to pledge, assign, mortgage and transfer all of its rights under this Permit to the trustee under the Master Trust Indenture or any other third party trustee or other fiduciary in connection with any ACTA Financing, and Owner hereby consents thereto; provided, however, that nothing herein shall be construed to relieve ACTA from ACTA's obligations under this Permit and the Operating Agreement. Except as expressly permitted by the preceding sentence, ACTA shall not pledge, assign, mortgage or transfer, by operation of law or otherwise, all or any part of its interest in the Property, any improvements located thereon or this Permit to any other person or entity. Except as permitted in this Section 9.1, any attempted pledge, assignment, mortgage or transfer by ACTA shall be voidable at Owner's option and shall constitute a Default under this Permit.

Section 9.2    **No Merger.** No merger shall result from ACTA's surrender of this Permit or the termination of this Permit in any other manner. In any such event, Owner may terminate any or all subpermits or succeed to the interest of ACTA thereunder.

Section 9.3    **Assignment by Owner.** Owner may assign or transfer the Property or its rights under this Permit without ACTA's consent.

#### **ARTICLE 10: DEFAULTS; REMEDIES.**

Section 10.1    **Default; Breach.** A "**Default**" is defined as the occurrence of any of the following events: (i) ACTA abandons construction of the Project or fails to proceed with construction of the Project as required hereunder; (ii) ACTA fails to perform any of ACTA's obligations under this Permit or fails to comply with or perform any of the terms, covenants or conditions under this Permit; (iii) an event of default occurs under the Federal Loan or any ACTA Financing; (iv) ACTA makes a general assignment or general arrangement for the benefit of creditors; (v) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against ACTA and is not dismissed within thirty (30) days; (vi) a trustee or receiver is appointed to take possession of substantially all of ACTA's assets located at the Property or of ACTA's interest in this Permit and possession is not restored to ACTA within thirty (30) days; (vii) substantially all of ACTA's assets located at the Property or if ACTA's interest in this Permit is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days or (viii) any change in the entities comprising ACTA. A "**Breach**" is defined as the occurrence of one or more of the above Defaults and the failure of ACTA to cure such Default within thirty (30) days after written notice from Owner to ACTA; provided, however, that if the nature of ACTA's Default is such that more than thirty (30) days are

reasonably required for its cure, then ACTA shall not be deemed to be in Breach if ACTA commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

**Section 10.2 Remedies.** On the occurrence of a Breach by ACTA, Owner may exercise any and all rights or remedies permitted by law, except that no merger of this Permit shall be deemed to occur as a result thereof; and except that Owner shall have no power to terminate this Permit by reason of any such Breach on the part of ACTA if: (i) such termination would impair the ability of ACTA to pay principal of and interest on any ACTA Financing or the Federal Loan or (ii) such termination would materially adversely affect ACTA's rights under the Operating Agreement to collect, hold and expend ACTA Revenues and to exercise its other rights thereunder. The notice required by Section 10.1 is intended to satisfy any and all notice requirements imposed by law on Owner and is not in addition to any such requirement. So long as any ACTA Financing or the Federal Loan remains outstanding, Owner shall have no right to offset any amounts due to ACTA from Owner under the Operating Agreement against amounts due to Owner from ACTA pursuant to this Permit.

**Section 10.3 Owner's Right to Cure ACTA's Default.** At any time after a Default by ACTA occurs under this Permit, Owner may, but is not obligated to, cure such Default at ACTA's cost. If Owner at any time, by reason of such Default by ACTA, pays any sum or does any act, the sum paid by Owner plus the reasonable cost of performing such act shall be due to Owner immediately at the time the sum is paid or the act performed. No such payment or act shall constitute a waiver of Default or of any remedy for Breach or render Owner liable for any loss or damage resulting from any such act.

Section 10.4 **No Relief From Liability Upon Termination.** The expiration or termination of this Permit and/or the termination of ACTA's right to possession shall not relieve ACTA from liability under Section 10.2 of this Permit or under any indemnity provisions of this Permit as to matters occurring or accruing during the term hereof or by reason of ACTA's occupancy of the Property.

Section 10.5 **Cumulative Remedies.** Owner's exercise of any right or remedy shall not prevent it from exercising any other right or remedy. All of Owner's remedies upon the occurrence of an event of Default are cumulative. Owner's prosecution of any one of these remedies shall not preclude Owner from simultaneously or subsequently prosecuting any other remedy or remedies under this Permit or available at law or in equity. No act of Owner shall be construed as an election to proceed under any particular provision of this Permit to the exclusion of any other remedy that may then or thereafter be available to Owner. No delay or failure by Owner to exercise any right or remedy under this Permit shall be construed to be a waiver of that right or remedy or of any Default by ACTA. Owner may exercise any one or more of its rights and remedies at its option.

Section 10.6 **Owner's Default.** Owner shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after notice by ACTA to Owner specifying wherein Owner has failed to perform such obligation; provided, however, that if the nature of Owner's obligation is such that more than thirty (30) days are required for its performance, then Owner shall not be deemed to be in default if it commences such performance

within such thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion.

#### **ARTICLE 11: ESTOPPEL CERTIFICATES.**

**Section 11.1 Obligation to Deliver.** Upon Owner's request, ACTA shall execute, acknowledge and deliver to Owner a written statement certifying: (i) that none of the terms or provisions of this Permit has been changed (or if there has been any such change, describing all such changes); (ii) that this Permit has not been canceled or terminated; (iii) the last date of payment of Permit Fee and other charges and the time period covered by such payment; (iv) that Owner is not in default under this Permit (or, if Owner is claimed to be in default, stating why); (v) the current Permit Fee and (vi) such other matters as may be reasonably required by Owner. Such statement shall be delivered to Owner within fifteen (15) days after request. Any such statement may be given by Owner to any person or entity and such person or entity may rely conclusively upon such statement as true and correct.

**Section 11.2 Consequences of Non-Delivery.** If the statement described in Section 11.1 is not delivered to Owner within such fifteen (15) day period, Owner and any recipient may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Permit have not been changed except as otherwise represented by Owner, (ii) that this Permit has not been canceled or terminated except as otherwise represented by Owner and (iii) that Owner is not in default under the Permit. In such event, ACTA shall be estopped from denying the truth of such facts.



## **ARTICLE 12: INDEMNITY; OWNER EXCULPATION.**

Section 12.1 **Indemnity.** ACTA shall indemnify Owner against, defend and hold Owner harmless from any and all costs, claims, damages, liens, penalties, expenses, liabilities, attorneys' fees or consultants' fees, including any damage to or loss of Owner's property or revenue, arising from or involving: (i) the use of the Property or any improvements thereon by ACTA, the Railroads or any other person or entity, (ii) the conduct of ACTA's activities or anything else done or permitted by ACTA or the Railroads to be done in or about the Property, (iii) any Breach or Default in the performance of ACTA's obligations under this Permit, (iv) any misrepresentation or breach of warranty by ACTA under this Permit, (v) any other acts or omissions of ACTA or (vi) Hazardous Substances brought onto the Property by or for ACTA or by or for anyone under ACTA's control or with ACTA's permission including but not limited to the Railroads (but excluding any obligations of Owner under the Operating Agreement). ACTA shall defend Owner against any such cost, claim or liability at ACTA's expense with counsel acceptable to Owner or, at Owner's election, ACTA shall reimburse Owner for any legal fees and costs incurred by Owner in connection with any such claim. As a material part of the consideration to Owner, ACTA hereby assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and ACTA hereby waives all claims in respect thereof against Owner, except for any claim arising solely as a result of Owner's gross negligence or willful misconduct. No termination, cancellation or release agreement relating to this Permit entered into by Owner and ACTA shall release ACTA from its obligations under this Section 12.1, unless specifically so agreed by Owner in a writing referencing this Section 12.1.

Section 12.2 **Exemption of Owner from Liability.** Owner shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods or other property of ACTA, ACTA's employees, invitees or any other person in or about the Property, whether such damage or injury is caused by or results from: (i) earthquake, fire, steam, electricity, water, gas, rain or natural disaster; (ii) the breakage, leakage, obstruction or other defects of the Rail Corridor and any railroad-related improvements or any other cause; (iii) conditions arising in or about the Property, or from other sources or places; or (iv) any act or omission of the Railroads or any other occupant or permittee of the Property.

Section 12.3 **Owner Exculpation.** It is expressly understood and agreed that notwithstanding anything in this Permit to the contrary, and notwithstanding any applicable law to the contrary, the liability of Owner hereunder (including any successor) and any recourse by ACTA against Owner shall be limited solely and exclusively to an amount which is equal to the lesser of: (i) the interest of Owner in the Property or (ii) the equity interest Owner would have in the Property if the Property were encumbered by third-party debt in an amount equal to ninety percent (90%) of the value of the Property (as such value is determined by Owner). None of Owner's officials, officers, directors, managers, employees or agents ("**Owner Party**") shall have any personal liability under this Permit, and ACTA hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under ACTA. ACTA shall have no right to proceed against or recover from any Owner Party, individually or collectively.

Section 12.4 **Owner Defined.** As used in this Permit, the term "**Owner**" means only the current owner or owners of the Property or the leasehold estate under a ground lease of the

Property at the time in question. Each Owner is obligated to perform the obligations of Owner under this Permit only during the time such Owner owns such interest or title. Any Owner that transfers its title or interest is relieved of all liability with respect to the obligations of Owner under this Permit to be performed on or after the date of transfer. However, each Owner shall deliver to its transferee all funds previously paid by ACTA if such funds have not yet been applied under the provisions of this Permit.

#### **ARTICLE 13: MISCELLANEOUS PROVISIONS.**

Section 13.1 **Successors and Assigns.** Subject to Article 9, this Permit shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors in interest and assigns.

Section 13.2 **Consent; Determination.** Unless indicated otherwise in this Permit, whenever Owner's approval or consent is required, or a determination of the occurrence of an event is to be made by Owner, such consent may be withheld, or such determination may be made by Owner, in Owner's sole and absolute discretion.

Section 13.3 **Representations and Warranties.** Each party represents and warrants that the persons signing this Permit on behalf of such party have full power and authority to do so. ACTA represents and warrants that this Permit is a legally valid and binding agreement of ACTA, enforceable in accordance with its terms. Each party shall, upon execution of this Permit, deliver to the other party evidence of the such party's authorization to execute, deliver and perform this Permit in form reasonably acceptable to the other party.

Section 13.4 **Severability.** Each provision of this Permit 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.

Section 13.5 **Amendments.** No provision of this Permit shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

Section 13.6 **Counterparts.** This Permit may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

Section 13.7 **No Third Party Beneficiaries.** It is the intent of each party to this Permit that each provision of this Permit inure only to the benefit of the parties hereto, and their permitted successors and assignees, and shall not inure to the benefit of any other person or entity including, but not limited to, the Railroads. Nothing in this Permit shall be construed to modify, amend or release the Railroads from any of their respective obligations or responsibilities under the Operating Agreement, the Construction Agreements or any other agreement, including but not limited to any obligations to pay taxes, to indemnify or to repair, rebuild or maintain.

Section 13.8 **Waiver.** No waiver by either party of any condition, or of any breach of any term, covenant, representation or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

Section 13.9 **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.

Section 13.10 **Construction.** The language in all parts of this Permit shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Permit are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. Whenever required by the context of this Permit, the singular shall include the plural and the plural shall include the singular and the masculine, feminine and neuter genders shall each include the other.

Section 13.11 **Memorandum of Permit.** At the request of either party, a memorandum of this Permit shall be recorded with the Los Angeles County Recorder.

Section 13.12 **Non-Discrimination.** ACTA promises, and it is a condition to the continuance of this Permit, that it will not discriminate in its employment practices against any employee or applicant for employment in any manner prohibited by any applicable law or regulation or in connection with the operation, occupancy, tenure or use of the Property or any portion thereof.

Section 13.13 **Notices.** All notices and other communications under this Permit must be in writing and shall be deemed to have been duly given: (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile or (ii) on receipt, if mailed to the party to whom notice is



to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

Owner: POLA: Port of Los Angeles  
425 South Palos Verdes Street  
Post Office Box 151  
San Pedro, California 90733  
Attention: Executive Director  
Telecopy No.: (310) 732-0291  
Confirmation No: (310) 732-3456

With a  
Copy to: Port of Los Angeles  
425 South Palos Verdes Street  
Post Office Box 151  
San Pedro, California 90733  
Attention: Senior Assistant City Attorney  
Telecopy No.: (310) 831-9778  
Confirmation No: (310) 732-3750

POLB: Port of Long Beach  
925 Harbor Plaza  
Long Beach, California 90801  
Attention: Executive Director  
Telecopy No.: (562) 491-0237  
Confirmation No.: (562) 590-4100

With a  
copy to: City of Long Beach  
333 West Ocean Boulevard, Suite 1100  
Long Beach, California 90802-4664  
Attention: Principal Deputy City Attorney - Harbor Section  
Telecopy No.: (562) 436-1579  
Confirmation No.: (562) 570-2200

With a  
copy to: Quateman & Zidell LLP  
1901 Avenue of the Stars, Suite 1505  
Los Angeles, California 90067  
Attention: Lisa Greer Quateman, Esq.  
Telecopy No.: (310) 556-7750  
Confirmation No.: (310) 556-7755

ACTA:

Alameda Corridor Transportation Authority  
One Civic Plaza, Suite 600  
Carson, California 90745  
Attention: Chief Executive Officer  
Telecopy No.: (310) 233-7483  
Confirmation No.: (310) 847-4307

With a  
copy to:

Alameda Corridor Transportation Authority  
One Civic Plaza, Suite 600  
Carson, California 90745  
Attention: General Counsel  
Telecopy No.: (310) 847-4310  
Confirmation No.: (310) 233-7483

Either party hereto may change its address for notices by providing written notice of the change to the other party.

Section 13.14 **Time of the Essence.** Time is of the essence in this Permit and each and every provision of this Permit.

Section 13.15 **Owner's Costs.** Whenever this Permit requires ACTA to reimburse Owner for Owner's costs, Owner's costs are agreed to include all direct and indirect costs which Owner incurs whether with Owner's own forces or with independent contractors. These costs include salary and all other costs Owner incurs for its employees, all material and equipment costs, including an administrative equipment handling charge and allocation of general overhead expense as determined by Owner in good faith.

Section 13.16 **No Joint Venture.** Nothing contained in this Permit shall have the effect of creating a joint venture or partnership between or among either of the parties, or of rendering one liable for any of the debts or obligations of any other, unless expressly provided in this Permit. Further, nothing contained in this Permit shall have the effect of creating a joint venture or partnership between POLA and POLB or to render either of such entities liable for the debts,

obligations or actions of the other, nor shall either POLA or POLB be liable or responsible hereunder for any default, failure of performance, action or inaction of the other solely as a result of this Permit.

IN WITNESS WHEREOF, Owner and ACTA have signed this Permit as of the date first above written.

CITY OF LOS ANGELES, a municipal corporation,  
acting by and through its Board of Harbor  
Commissioners of the Port of Los Angeles

Date: Nov 12, 1998

By: 

Larry A. Keller,  
Executive Director  
Los Angeles Harbor Department

Attest: 

Rica Viola,  
Commission Secretary  
Los Angeles Harbor  
Department

Approved as to form this 9<sup>th</sup> day of Nov., 1998.

JAMES K. HAHN, City Attorney

By: 

Winston F. Tyler,  
Senior Assistant City Attorney

CITY OF LONG BEACH, a municipal corporation,  
acting by and through its Board of Harbor  
Commissioners of the Port of Long Beach

Date: 12-15-98

By: 

Richard D. Steinke,  
Executive Director  
Long Beach Harbor Department

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

Approved as to form this 15<sup>th</sup> day of December, 1998.

ROBERT E. SHANNON, City Attorney

By: Richard L. Landes  
Richard L. Landes,  
Principal Deputy City Attorney

ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY, a Joint Powers Authority

Date: 10/29/98

By: James C. Hankla  
James C. Hankla  
Chief Executive Officer

Approved as to form this 29 day of OCT., 1998.

|                                      |                 |                  |
|--------------------------------------|-----------------|------------------|
| Budget - FY 19 <u>98/99</u>          |                 |                  |
| Acct. <u>---</u>                     | Ctr. <u>---</u> | Proj. <u>---</u> |
| Funds Available, Date <u>10/6/98</u> |                 |                  |
| <u>Janet Lerner</u> "1/3/98"         |                 |                  |

to funds

By: Joseph Burton  
Joseph Burton,  
General Counsel



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**EXHIBIT B**

**ALAMEDA CORRIDOR  
USE AND OPERATING AGREEMENT**

by and among

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

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

**THE ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY,**  
a California joint powers authority,

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,**  
a Delaware corporation,

and

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

dated as of

October \_\_, 1998

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**ALAMEDA CORRIDOR  
USE AND OPERATING AGREEMENT**

**THIS ALAMEDA CORRIDOR USE AND OPERATING AGREEMENT** (this "**Agreement**"), dated as of October \_\_, 1998, is entered into by and among (i) **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (successor by merger to The Atchison, Topeka and Santa Fe Railway Company) ("**BNSF**"), (ii) **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (which also is successor by merger to Southern Pacific Transportation Company) ("**UP**"), (iii) **THE CITY OF LOS ANGELES**, a municipal corporation, acting by and through its **BOARD OF HARBOR COMMISSIONERS ("POLA")**, (iv) **THE CITY OF LONG BEACH**, a municipal corporation, acting by and through its **BOARD OF HARBOR COMMISSIONERS ("POLB")** (POLA and POLB are sometimes collectively referenced herein as "**Owner**"), and (v) **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority created under the laws of the State of California ("**ACTA**"), with reference to the following Recitals:

**RECITALS:**

**A.** Pursuant to that certain Purchase and Sale Agreement dated as of December 22, 1994 ("**SPT Purchase Agreement**"), by and between the former Southern Pacific Transportation Company, a Delaware corporation ("**SPT**"), as seller, and Owner, as purchaser, Owner acquired from SPT certain railroad rights of way and adjoining land and improvements located in the County of Los Angeles, State of California, commonly known as SPT's San Pedro Branch, and portions of SPT's Wilmington branch and Long Beach branch, all as more particularly described in the SPT Purchase Agreement.

**B.** Pursuant to that certain Purchase and Sale Agreement dated as of December 22, 1994 ("**UP Purchase Agreement**"), by and between Union Pacific Railroad Company, a Utah corporation ("**Union Pacific**"), as seller, and Owner, as purchaser, Owner acquired from Union Pacific certain railroad rights of way and adjoining land and improvements located in the County of Los Angeles, State of California and commonly known as the UP San Pedro Branch, as more particularly described in the UP Purchase Agreement. In December 1992, Owner acquired from Union Pacific certain other railroad rights of way and adjoining land and improvements with respect to the Project (hereinafter defined).

**C.** Pursuant to that certain Agreement for Sale of Certain Real Property Interests in the Los Angeles Harbor Subdivision Rail Line between MP 27.6 and MP 28.3 and Other Interests at Redondo Junction of The Atchison, Topeka and Santa Fe Railway Company to City of Los Angeles and City of Long Beach dated as of December 22, 1994 by and between Owner, as purchaser, and the former The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation ("**ATSF**"), as seller ("**ATSF Purchase Agreement**"), Owner acquired from ATSF certain railroad rights of way and other property interests and improvements as more particularly described in the ATSF Purchase Agreement.

**D.** The parties hereto acknowledge that the Port of Long Beach and the Port of Los Angeles (collectively, "**Ports**") are major, economically important seaports which provide public dock and wharf facilities to handle the shipment and transportation of international cargo, freight and other goods. The Ports currently are served by rail by BNSF and UP, each of which use their own (and, in most cases, separate) rail lines along various routes to carry such freight, cargo and other goods between the Ports and staging areas and rail yards around or about central Los Angeles, a distance of approximately 20 miles.

**E.** In anticipation of the substantially increased volume of traffic to and from the Ports through the year 2020, and to ensure the efficient and competitive operation of the Ports and the transportation of international freight, cargo and other goods to and from the Ports through the year 2020, Owner and ACTA have reviewed several alternatives intended to mitigate and improve existing and anticipated conditions at the Ports, improve the efficient and competitive service to and from the Ports through the year 2020, and improve public safety along the route on which Port-related traffic is transported.

**F.** The alternative which Owner and ACTA presently are pursuing is the consolidation of BNSF's and UP's overhead rail freight service to and from the Ports onto one set of rail lines running north from the Ports, generally parallel to Alameda Street, to points in central Los Angeles (from which BNSF and UP then would move such freight on their separate rail lines to points beyond Los Angeles).

**G.** ACTA is a joint powers authority created by the City of Los Angeles and the City of Long Beach pursuant to California Government Code Sections 6500 *et seq.* ACTA will (i) obtain and provide for the financing necessary to construct the Project, (ii) cause the Project to be constructed, and (iii) after construction, perform certain administrative duties with respect to the Rail Corridor (including the collection of fees and charges to be paid by parties to this Agreement, and the payment of principal, interest and other amounts relating to the financing for the Project), all as more particularly described in this Agreement.

**H.** Concurrently herewith, Owner and ACTA are entering into a Use Permit ("**Permit**"), covering the property comprising the Rail Corridor which, among other things, allows ACTA to construct the Project on the property comprising the Rail Corridor and perform its other duties under this Agreement.

**I.** The parties hereto acknowledge that Owner acquired the property described in the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, and certain other properties previously acquired by Owner from Union Pacific, for the purpose of constructing the Rail Corridor, and that Owner would not otherwise have acquired such property if Railroads (hereinafter defined) had not agreed to use the Rail Corridor (on the terms and conditions set forth in this Agreement) for the purpose of overhead rail freight service to and from the Ports.

**J.** In connection with the transactions described in the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, Owner, SPT, Union Pacific and ATSF entered into that certain Memorandum of Understanding for Joint Operating Agreement (Alameda Transportation Corridor) dated as of December 22, 1994

("MOU"), which, among other things, set forth the basic terms and conditions for the financing, construction, use, operation, maintenance and repair of the Rail Corridor, and the parties' agreement to negotiate in good faith and execute as soon as practical after the date thereof, a definitive agreement on these matters on terms consistent with those set forth in the MOU (except as otherwise agreed by the parties). This Agreement is the definitive agreement that was described in the MOU and contemplated by Owner and Railroads, and this Agreement supercedes the MOU.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF, UP, Owner and ACTA hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**1.1 Specific Definitions.** As used in this Agreement, the following terms shall have the respective meanings set forth below:

**"ACTA"** means the Alameda Corridor Transportation Authority, a joint powers authority created under the laws of the State of California.

**"ACTA Financing"** has the meaning set forth in Section 7.3(b)(1)(i).

**"ACTA Revenues"** has the meaning set forth in Section 7.1(a).

**"Acquired Rail Lines"** has the meaning set forth in Section 15.15.

**"Additional Capital Improvements"** has the meaning set forth in Section 8.6.

**"Annual Amount"** has the meaning set forth in Section 7.3(b)(1).

**"Benefit Amount"** has the meaning set forth in Section 7.3(b)(7).

**"BNSF"** means The Burlington Northern and Santa Fe Railway Company, a Delaware corporation.

**"BNSF C&M Agreement"** means that certain Right of Entry and Construction Agreement dated as of the date of this Agreement (as the same may be amended from time to time, to the extent not inconsistent with the provisions of this Agreement), by and among BNSF, ACTA and Owner.

**"Bonds"** shall mean revenue bonds or other evidences of indebtedness issued by ACTA from time to time pursuant to the Master Trust Indenture.

**"Capital Expenses"** means the costs and expenses incurred in making any capital improvements or betterments, or replacements to the extent that costs and expenses of

replacements are determined to be Capital Expenses in accordance with the guidelines to be adopted by the Operating Committee pursuant to Section 2.5(b), to (i) the Rail Corridor other than the Non-Rail Components, and (ii) subject to the other provisions of this Agreement, the Port-Owned Tracks,

**“Container Charges”** has the meaning set forth in Section 7.3(g).

**“Corridor Dispatcher”** has the meaning set forth in Section 3.1.

**“Corridor Maintenance Contractor”** has the meaning set forth in Section 8.1.

**“CPI”** means the Consumer Price Index for all Urban Consumers, Los Angeles-Anaheim-Riverside (all items), 1982-1984 = 100, published by the United States Department of Labor, Bureau of Statistics, or such successor index as hereafter may be published by the United States Department of Labor, Bureau of Statistics, or another index that hereafter may be agreed upon by the parties to this Agreement.

**“Crossing Rights”** has the meaning set forth in Section 15.15.

**“Dolores Yard”** means Dolores Yard as outlined on Page 3 of the Map.

**“Dow Chemical Facility”** means the Dow Chemical Facility outlined on Page 3 of the Map.

**“Drill Track”** means a single track rail line constructed pursuant to and in accordance with the provisions of the UP C&M Agreement, any support structures to the extent they support the Drill Track and the real property on and along which such rail line is located, generally running adjacent and parallel to parts of the Rail Corridor. Except as otherwise provided in this Agreement, the Drill Track will be used to serve local industry and for local movements to or from UP’s Santa Ana Branch, and will not be used for Through Train (hereinafter defined) movements. The Drill Track shall not be part of the Rail Corridor or the Port-Owned Tracks (hereinafter defined).

**“Drill Track Operating Agreement”** means an operating agreement to be entered into by and between UP and Owner, governing the use, operation, maintenance, repair and replacement of the Drill Track, as amended from time to time. To the extent the terms of the Drill Track Operating Agreement conflict with the provisions of this Agreement, the provisions of this Agreement shall control.

**“Estimated Completion Date”** has the meaning set forth in Section 2.1.

**“Estimated Reserve Balance”** has the meaning set forth in Section 7.4(h).

**“FRA”** means the Federal Railroad Administration.

**“Federal Loan”** means the \$400 million loan made to ACTA by the U.S. Department of Transportation, acting through the Federal Highway Administration, pursuant to

an Amended and Restated Loan Agreement dated as of October 1, 1998, or any replacement or refinancing thereof with or by an agency of the United States Government.

**"Hazardous Substances"** means any toxic or hazardous wastes, materials or substances, pollutants or contaminants, including petroleum (including crude oil or any fraction thereof), natural gas and synthetic fuel products and by products, and any substances defined in, regulated or listed as "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "toxic wastes," "pollutants," "contaminants," or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 40 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., the California Health and Safety Code, Sections 25115-25117, 25249.5, 25249.8, 25281 and 25316, and regulations promulgated pursuant to any of the foregoing.

**"ICTF"** means the Intermodal Container Transfer Facility outlined on Page 3 of the Map.

**"Indemnified Matter"** has the meaning set forth in Section 11.5(a).

**"Indemnitee"** has the meaning set forth in Section 11.5(a).

**"Indemnitor"** has the meaning set forth in Section 11.5(a).

**"Joint Use Construction Projects"** means the improvements described on Exhibit B attached hereto.

**"Local Train"** means any train on which at least 80% of the railcars are delivered to or picked up from industries which are located between the northerly boundary of the Ports and the point that the mainline tracks owned by a particular Railroad diverge from the northerly end of the Rail Corridor. For purposes of this definition, (i) one platform of at least 40-feet or one well of at least 40-feet shall equal one railcar, and (ii) railcars carrying Toyota (or related company) automobiles originating at or being delivered to the Toyota Distribution Facility during the exclusive service period described in Section 5.2(b)(iii) shall be considered originating from or delivered to an industry located north of the Ports.

**"Losses"** has the meaning set forth in Section 11.5(b).

**"M&O Charges"** has the meaning set forth in Section 7.2(a).

**"Manuel Sidings"** means the three sidings near the Sepulveda Boulevard Bridge and located generally in the vicinity of the track identified as "Manuel 3" on Page 3 of the Map.

**"Map"** means the map (consisting of four pages) attached hereto as Exhibit A.

**"Master Trust Indenture"** means that certain Master Trust Indenture to be entered into by ACTA and a third party trustee, which provides the terms and conditions upon



which ACTA may issue revenue bonds or other evidences of indebtedness for the purpose of financing all or a portion of the Project, as amended, supplemented, or amended and restated from time to time.

**"Mead Yard"** means Mead Yard as outlined on Page 3 of the Map.

**"Monthly Amount"** has the meaning set forth in Section 7.5(a).

**"Net Project Costs"** has the meaning set forth in Section 7.3(f).

**"Non-Rail Components"** means the walls, retaining walls, embankments, support structures and drainage facilities of and for the trench portion of the Rail Corridor, and the structural portions of the bridges and overpasses over the trench portion of the Rail Corridor. The term Non-Rail Components shall not include (i) public streets, roadways or highways along the Rail Corridor, (ii) the surface pavement of streets on the bridges and overpasses over the trench portion of the Rail Corridor, and (iii) the lighting, drainage and fence structures located on the bridges and overpasses over the trench portion of the Rail Corridor (and the maintenance, repair and replacement of such items shall not be the responsibility of the parties to this Agreement or paid for with M&O Charges, Use Fees, Container Charges, Port Advances or from the Reserve Account).

**"Non-Rail Maintenance and Capital Improvement Charges"** has the meaning set forth in Section 7.4(a).

**"Non-Waterborne Containers"** has the meaning set forth in Section 7.3(e)(1).

**"North End Grade Separation"** means that certain rail-to-rail grade separation, by which BNSF's San Bernardino Subdivision Tracks will cross over the Rail Corridor Tracks and the Los Angeles River in the location shown on Page 1 of the Map, thereby eliminating the at-grade rail crossing that currently exists in the vicinity of Redondo Junction.

**"Notice of Estimated Completion"** has the meaning set forth in Section 2.1.

**"Operating Committee"** means a committee comprised of representatives of POLA, POLB, UP and BNSF, which committee is hereby established by such entities for the specific purposes described in this Agreement. The Operating Committee shall be comprised of one representative (and one alternate for each representative) designated by each of POLA, POLB, UP and BNSF. POLA, POLB, UP and BNSF each shall designate in writing their respective representatives (and alternates) on the Operating Committee no later than December 31, 1998. Each such party may change its representative (and/or its alternate) on the Operating Committee from time to time by delivering written notice of such change to the other parties to this Agreement in accordance with the terms of this Agreement. If, after the date hereof, (i) any two parties to this Agreement who then are members of the Operating Committee merge, or if one such party otherwise acquires another party, the resulting entity shall have only one vote on the Operating Committee, (ii) any Railroad is permitted to assign less than all of its rights under this Agreement in accordance with Section 15.1, the assignee thereunder shall not have a vote on the Operating Committee, and (iii) Owner assigns all of its rights under this Agreement to a single entity, then such entity or assignee shall have only one vote on the Operating Committee.

(provided, however, a transfer or lease of, or the grant of a license, permit or other rights to, or grant of a security interest in, the Rail Corridor to ACTA, or another entity in connection with any financing of the Project, shall not by itself be deemed or construed as an assignment by Owner of its rights under this Agreement, and shall not permit such entity to have a vote or any other rights on the Operating Committee).

**"Other Rail Lines"** has the meaning set forth in Section 15.15.

**"Overdue Rate"** means a rate per annum equal to the "prime rate" plus 5%, but in no event greater than the maximum rate permitted to be charged under the law of the State of California as of the date the payment in question was due under this Agreement. As used in the preceding sentence, "prime rate" means the rate announced from time to time by the Los Angeles main office of Bank of America as its "reference rate". If Bank of America no longer announces a "reference rate," then the Operating Committee shall promptly adopt a substitute benchmark for determining the Overdue Rate similar to the Bank of America "reference rate".

**"Owner"** means, collectively, POLA and POLB, and their respective successors and assigns with respect to ownership of the Rail Corridor property and improvements.

**"Permitted Switching Locations"** means that portion of a Rail Corridor through track that must be occupied while a train is switching rail cars at one of the following industries or locations shown on the Map: Texaco Products, K-PAC, UP Hammond Lead and the Auto Dock Lead. If such an industry or location permanently ceases to use rail freight service from the Rail Corridor, then the through track segment used for switching such industry or location no longer shall constitute a Permitted Switching Location unless it is necessary to use such through track segment to switch one of the other industries or locations identified in this definition.

**"PHL"** means Pacific Harbor Line, Inc., a Delaware corporation.

**"Pier B Yard"** means the Pier B Yard (formerly known as the 8th Street Yard) in the Port of Long Beach as outlined on Page 3 of the Map.

**"POLA"** means the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners.

**"POLB"** means the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners.

**"Port"** means, individually, each of the seaports located on San Pedro Bay in the County of Los Angeles commonly known as the Port of Long Beach and the Port of Los Angeles, and "Ports" means, collectively, both of such seaports.

**"Port Advances"** has the meaning set forth in Section 7.3(b)(5).

**"Port Facilities"** means all existing or future terminals, yards and facilities owned or leased by, or located on property owned by, Owner, POLA or POLB (or any successor or assignee of any of the foregoing) and located within the Port areas (as such Port areas are shown

on Page 4 of the Map), including the ICTF, as such facilities may be expanded or contracted from time to time.

**"Port-Owned Tracks"** means all Track and Track Support Structures now or in the future owned jointly or separately by POLA and/or POLB (or any successor or assignee of either or both of the foregoing), located within the Port areas shown on Page 4 of the Map, whether or not located within the Rail Corridor, provided, however, that neither the Drill Track nor Track located within a Port Facility shall be considered part of the Port-Owned Tracks.

**"Port-Owned Tracks"** also shall include (i) the Manuel Sidings and the portion of the UP San Pedro Branch used to access the Manuel Sidings, but only if the Manuel Sidings are used for holding or storing trains as part of the Rail Corridor pursuant to Section 9.1, and (ii) the portion of the UP San Pedro Branch between Thenard Crossing and the Port areas shown on Page 4 of the Map. Except as provided in clause (ii) of the preceding sentence, the UP San Pedro Branch shall not be deemed to be Port-Owned Tracks under this Agreement unless Owner expressly so agrees.

**"Port Rail Agreements"** means, collectively, (i) that certain Permit to Use Tracks Agreement dated as of December 1, 1997, by and among POLA, BNSF, SPT and Union Pacific, (ii) that certain San Pedro Bay Harbor Rail Operating Agreement dated as of December 1, 1997, by and between POLA and PHL, (iii) that certain Use of Tracks Agreement dated as of June 1, 1998, by and among POLB, UP and BNSF, and (iv) that certain Long Beach Rail Operating Agreement dated as of June 1, 1998, by and between POLB and PHL, as each of such agreements may be extended or amended from time to time.

**"Port Rail Operator"** means the entity (or entities) in charge of dispatching and operating trains on Port-Owned Tracks, and maintaining such Port-Owned Tracks, within the harbor areas of POLA and POLB. The current location of such dispatching and operating authority is shown on Exhibit A attached hereto. As of this date, the Port Rail Operator is PHL, which has been engaged by POLA with respect to POLA's harbor area, and by POLB with respect to POLB's harbor area.

**"Project"** means the construction and development of the project described in that certain Plan adopted by ACTA on January 14, 1993, as modified and shown on the Conceptual Design Layout (Alternative 2.1B) (copies of which have been date stamped December 22, 1994 and initialled by each of POLA, POLB, SPT, ATSF and Union Pacific), prepared by Daniel, Mann, Johnson & Mendenhall in joint venture with Moffatt & Nichol, Engineers (including the Tracks and Track Support Structures for the Rail Corridor, the Non-Rail Components, and streets, roadways and highways and street, roadway, highway and railway overpass facilities), as updated and, to the extent shown thereon, superseded by the Track Schematic Drawings, and as the same may be amended from time to time, to the extent not inconsistent with the Track Schematic Drawings and the provisions of this Agreement (provided that if any such amendment to the Plan made after the date of this Agreement, other than an amendment required by law or an amendment required by a governmental entity or agency other than Owner or ACTA, will increase the total amount of Net Project Costs by an amount in excess of \$50 million, then such amendment must first be approved by the Operating Committee and, if disapproved by the Operating Committee, such amendment nevertheless may be made if Owner

and ACTA agree that the amount in excess of said \$50 million will be paid entirely from sources other than Use Fees and Container Charges).

**"Property Assembly Reimbursement"** has the meaning set forth in Section 7.3(b)(6).

**"Pro Rata Portion"** means, with respect to any of the Railroads, a percentage equal to the relationship of such Railroad's use (including Repositioning and Crossing Movements, as hereinafter defined) of the Rail Corridor and the Port-Owned Tracks to the total use of the Rail Corridor and the Port-Owned Tracks by all of the Railroads (including Repositioning and Crossing Movements) during a given time period. Use shall be measured by gross ton miles or by train miles depending upon the nature of the costs or expenses subject to proration, as more particularly set forth in this Agreement.

**"Put Expiration Date"** has the meaning set forth in Section 2.4(b)(ii).

**"RCAF"** means the Rail Cost Adjustment Factor (unadjusted), as determined by the STB.

**"Rail Corridor"** means a multiple main track, high density, predominantly 40 mile per hour mainline railroad system (including the Track and Track Support Structures and identified rail connections for each of the Railroads) with centralized traffic control which permits bi-directional operation on each main track and provides for maximum train-handling capacity, together with the real property on which such railroad system is located, as generally shown on the Conceptual Design Layout described above in the definition of "Project," as updated and, to the extent shown thereon, superseded by the Track Schematic Drawings (provided that (i) "maximum train-handling capacity" shall not be construed to require any Railroad to upgrade its locomotives in order to meet such standard in operating on the Rail Corridor, and (ii) "predominantly 40 mile per hour" shall not be construed to require that the entire Rail Corridor and every connection thereto be designed and constructed to accommodate rail operations at speeds of 40 miles per hour). If constructed, the Rail Corridor will be constructed in accordance and conformance with the provisions and standards set forth in the UP C&M Agreement (or, with respect to any portion of the Rail Corridor constructed on property owned by BNSF, in accordance with the provisions and standards set forth in the BNSF C&M Agreement) and will be generally located in the right-of-way Owner acquired from SPT running generally along and parallel to Alameda Street beginning, in the north, for each Railroad, at the point that such Railroad leaves the mainline tracks or trackage rights owned or held by such Railroad (other than the Rail Corridor itself), which point, for each Railroad, is shown on Page 1 of the Map, and ending, in the south, at the Anaheim Street grade separation in the City of Long Beach and at the northerly entrance to the Badger Avenue Bridge in the City of Long Beach. The Rail Corridor shall include:

- (a) the Joint Use Construction Projects (provided, however, capital replacement of the North End Grade Separation shall be governed by separate agreements between BNSF and the commuter agencies which will operate over the North End Grade Separation, and provided further, however, for purposes of

maintenance, repair and dispatching, the North End Grade Separation shall not be considered part of the Rail Corridor);

(b) the connections and crossings identified in Section 3.1(e)(i)(B) and Section 3.1(a)(i)(C) of the UP C&M Agreement;

(c) a Track connection between the Rail Corridor and a Track leading to Watson Yard, up to the property line of Owner's property, as that Watson Yard Track connection is described in the ATSF Purchase Agreement (as such description is updated and modified in the BNSF C&M Agreement); and

(d) a Track connection between the Rail Corridor and BNSF's main line Tracks near Redondo Junction, up to the property line of Owner's property, as that Track connection is described in the ATSF Purchase Agreement (as such description is updated and modified in the BNSF C&M Agreement).

The Rail Corridor shall not include any street, roadway or highway structures or improvements over or adjacent to the Rail Corridor (provided that this sentence shall not be deemed to exclude from the definition of Rail Corridor any (x) maintenance, access or service roads constructed on or adjacent to the Rail Corridor property for the primary purpose of providing access to or maintaining the Track and other components of the Rail Corridor, or (y) the structural portion of bridges and overpasses over the trench portion of the Rail Corridor (which structural portions constitute part of the Non-Rail Components), all of which shall be part of the Rail Corridor). The Rail Corridor shall not include the Drill Track.

**"Railroad"** means, individually, BNSF or UP, and **"Railroads"** means, collectively, all of BNSF and UP, and the assignees of the foregoing permitted pursuant to this Agreement, together with any other Class I or financially responsible and experienced regional railroad that in the future may be granted rights by Owner to use the Rail Corridor pursuant to Section 15.1.

**"Repositioning and Crossing Movement"** means one of the following continuous movements across the Rail Corridor (*i.e.*, not including switching on the Rail Corridor) for the purpose of repositioning of locomotives, railcars and equipment, or moving the same across the Rail Corridor, only:

(i) movements over the Rail Corridor only north of 25th Street (and, with respect to UP, including J Yard), or the connection of UP's Wilmington Branch to the Rail Corridor, and not to or from any Port Facility;

(ii) movements over the Rail Corridor only south of the Dolores Yard/ICTF connection track at Dominguez Junction between a Port Facility and a rail origin or destination south of Dominguez Junction (which shall include for BNSF only movements to Watson Yard and then to an industry or yard located on BNSF's Harbor Subdivision south of 25th Street);

- (iii) movements across the Rail Corridor that both originate and terminate on the Drill Track or adjacent yards;
- (iv) movements across the Rail Corridor between UP's Wilmington Branch and Dolores Yard;
- (v) turning of locomotives and railcars by UP using the Watson Yard connection track as described in that certain Use of Tracks Agreement dated as of December 22, 1994 among SPT, BNSF and Owner; and
- (vi) movements between the Dow Chemical Facility and Mead Yard;

provided that in each case the Railroad conducting the Repositioning and Crossing Movement shall not hold, store, position or leave trains, railcars, locomotives or other equipment on, or otherwise block, any of the main line tracks of the Rail Corridor. In no event shall Repositioning and Crossing Movements be used to move railcars or containers that otherwise are required by this Agreement to use the Rail Corridor to another rail line in order to avoid using the Rail Corridor.

**"Required Annual Payment"** has the meaning set forth in Section 7.3(h)(i).

**"Required Debt Service Reserve"** has the meaning set forth in Section 7.3(b)(1)(ii).

**"Reserve Account"** has the meaning set forth in Section 7.4 (a).

**"Reserve Account Target"** has the meaning set forth in Section 7.4(b).

**"Shortfall Advances"** has the meaning set forth in Section 7.3(h)(i).

**"Significant Delay"** means that access to or operation on the Rail Corridor will be delayed for a significant time period, as reasonably determined by the Corridor Dispatcher under the particular circumstances. The Operating Committee will establish specific guidelines and parameters for the Corridor Dispatcher to determine whether a particular circumstance constitutes (or will constitute) a Significant Delay.

**"SPB Connection Track"** has the meaning set forth in Section 3.2(f).

**"SPB Segment"** has the meaning set forth in Section 3.2(f).

**"Standard Detour Agreement"** has the meaning set forth in Section 2.4(a).

**"STB"** means the Surface Transportation Board.

**"Substantial Completion"** means the earlier of (i) completion of construction of the Rail Corridor to such an extent that there is sufficient capacity to permit UP and BNSF to operate Through Trains on an efficient basis between the Ports and the northerly limits of the Rail Corridor at then current and reasonably anticipated volumes of traffic at the train speeds



shown on the Track Schematic Drawings, except (x) as described on Exhibit A-1 attached hereto (and the parties hereto acknowledge that if construction of the Rail Corridor otherwise has been completed in accordance with this clause (i), the fact that one or more of the projects described on Exhibit A-1 are not then complete shall not preclude Substantial Completion from being deemed to have occurred), and (y) the fact that local switching activities may be conducted on one of the mainline tracks of the Rail Corridor at the Permitted Switching Locations, as described in Section 2.2, shall not be taken into account for purposes of this clause (i); or (ii) such earlier date, if any, on which all of the parties to this Agreement agree that Railroads will commence joint rail operations of Through Trains on the Rail Corridor between 25th Street and West Thenard. Substantial Completion of the Rail Corridor shall mean and include the construction of the crossings and connections described in clause (b) of the definition of "Rail Corridor," on the terms set forth in the UP C&M Agreement, and the construction of the connection Tracks described in clauses (c) and (d) of the definition of "Rail Corridor" beyond the property line of Owner's property on the terms set forth in the BNSF C&M Agreement.

**"Tax Exempt Rate"** has the meaning set forth in Section 7.3(b)(7).

**"TEU"** means twenty-foot equivalent unit. For purposes of computing those Use Fees and Container Charges under Section 7.3 which are based on a TEU, the rate shall be the amount obtained by multiplying the then-current Use Fee or Container Charge (as the case may be) per TEU, by the length of the container, and dividing that product by 20.

**"Through Train"** means any train movement commencing or terminating at a Port Facility, together with UP's "Dolores Hauler" (pursuant to the Project environmental impact report) and existing unit trains to or from any oil refineries served from the Rail Corridor (pursuant to the Project environmental impact report), excluding, however, any Repositioning and Crossing Movements and/or Local Train.

**"Toyota Distribution Facility"** means the Toyota Distribution Facility as outlined on Page 3 of the Map.

**"Track"** means all railroad related improvements, including all tracks (including main line tracks, spur tracks, lead tracks, passing tracks and storage tracks) and all rail-related facilities (including rails and fastenings, switches, frogs, bumpers, ties, ballast, roadbed, signaling devices and systems, traffic control systems, interlocking devices and plants, crossing warning devices, crossing surfaces, signal pole lines, and signal communication facilities and equipment).

**"Track Schematic Drawings"** means those certain track schematic drawings dated 12 January 1998 (with a date code of 1 October 1998 along the lower right margin) and initialed by each of POLA, POLB, ACTA, BNSF and UP, a copy of which are attached to each of the UP C&M Agreement and the BNSF C&M Agreement.

**"Track Support Structures"** means those properties, improvements and structures for use or support of the Track, including rail bridges, rail tunnels, culverts and other structures, subgrade, embankments, walls (including sound walls but excluding support

structures for street, roadway or highway bridges), dikes, pavements and drainage facilities, and maintenance, access and service roads.

“UP” means Union Pacific Railroad Company, a Delaware corporation.

“UP C&M Agreement” means that certain Amended and Restated Construction and Maintenance Agreement dated as of the date of this Agreement (as the same may be amended from time to time, to the extent not inconsistent with the provisions of this Agreement), by and between UP and Owner, governing the construction of the Rail Corridor and the Drill Track.

“UP San Pedro Branch” means the railroad rights of way and adjoining land and improvements located in the County of Los Angeles, State of California, commonly known as the UP San Pedro Branch, approximately between Milepost 3.08 in the north and Milepost 21.71 in the south, as more particularly described in the UP Purchase Agreement.

“Unpaid Shortfall” has the meaning set forth in Section 7.3(h)(iii).

“Use Fees” has the meaning set forth in Section 7.3(a).

“Use Fees Termination Date” has the meaning set forth in Section 7.3(c).

“Waterborne Containers” has the meaning set forth in Section 7.3(e)(1).

“Watson Yard” means Watson Yard, as shown on Page 3 of the Map.

“West Thenard” means the rail junction shown on Page 3 of the Map.

**1.2 Generally.** All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. All references to Sections, subsections, paragraphs and subparagraphs are to Sections, subsections, paragraphs and subparagraphs of this Agreement unless indicated otherwise. The words “herein”, “hereof”, “hereunder” and other similar compounds of the word “here” when used in this Agreement shall refer to this entire Agreement and not to any particular provision or section unless specifically indicated otherwise. The terms “include” and “including” shall mean “including, but not limited to”.

## **ARTICLE II**

### **CONSTRUCTION AND USE OF RAIL CORRIDOR AND DRILL TRACK**

**2.1 Construction of the Rail Corridor.** The parties hereto acknowledge and agree that: (i) although Owner and ACTA presently contemplate that the Project eventually will be constructed, there is no assurance or guarantee that all or any portion of the Project will be constructed, the time (if ever) within which such construction will be completed, or that the Project will be constructed in the manner presently contemplated, and (ii) no entity (including POLA, POLB, ACTA (or any other entity in which POLA and POLB are members) or any of

the Railroads) shall have any obligation whatsoever to construct all or any portion of the Project, or any liability for the failure to construct all or any portion of the Project. Notwithstanding the foregoing, Owner and ACTA hereby agree that, if the Project is constructed, the Project will be constructed at the cost of entities other than the Railroads (except as may otherwise be provided in this Agreement or any other agreement to which one or more of the Railroads is a party) and in accordance with the UP C&M Agreement and, with respect to any portion of the Project constructed on property owned by BNSF, in accordance with the BNSF C&M Agreement. ACTA shall deliver to Owner and the Railroads, as soon as practicable under the circumstances (but no later than 150 days prior to the date on which ACTA estimates that Substantial Completion shall occur), written notice ("**Notice of Estimated Completion**") setting forth the date on which ACTA estimates that Substantial Completion shall occur ("**Estimated Completion Date**").

## **2.2 Agreement to Use.**

(a) UP and BNSF agree that, upon Substantial Completion, and provided that the STB (and any other federal agency with jurisdiction) has given any necessary approvals or consents, each Railroad shall use and, subject to the provisions of this Agreement, shall have the right to use, the Rail Corridor for all Through Train movements. No Railroad may use the Rail Corridor between 25th Street and West Thenard for train movements prior to Substantial Completion. UP and BNSF, with reasonable cooperation from Owner, each shall be responsible for filing, within 30 days after the date of this Agreement, an application or request for any approvals or consents from the STB (and any other federal agency with jurisdiction) that may be necessary for such Railroad to operate over the entire length of the Rail Corridor, and shall cooperate diligently and reasonably with each other in connection with obtaining such approvals or consents. In addition, UP and BNSF each shall cooperate reasonably with Owner and ACTA in obtaining any other approvals or consents that may be necessary for the Project.

(b) Subject to the payment of fees pursuant to Article VII, the Railroads shall have the right to use the Rail Corridor for the movement of Local Trains, provided, however, (i) such Local Trains shall have the priority set forth in Section 3.2 and shall otherwise comply with the provisions of this Agreement, (ii) although Local Trains may operate on the Rail Corridor, there shall be no switching of rail cars on the Rail Corridor, nor shall there be any freight rail service to any local industry customers directly from the Rail Corridor, except as expressly permitted in Section 3.1(a)(iii) of the UP C&M Agreement and except for switching activities at the Permitted Switching Locations (subject to the terms and conditions set forth below), and (iii) in no event shall more than 20% of the cargo transported by all Railroads on the Rail Corridor in any year move to or from facilities which are not included within the meaning of "port facilities" under Section 142(a)(2) of the Internal Revenue Code of 1986, as amended (with such percentage to be determined on the basis of gross ton miles transported on the Rail Corridor). Each Railroad shall submit to ACTA (with a copy to the Operating Committee), within 30 days after the end of each month (commencing with the second full calendar month after joint rail operations commence on the Rail Corridor) a written statement setting forth the number of gross ton miles transported on the Rail Corridor that did not move to or from "port facilities" during such month. If ACTA or the Operating Committee (or any agency of the federal government) determines that the 20% limitation set forth in the immediately preceding sentence has been or may be reached in any year, ACTA or the

Operating Committee may direct that some or all of the railcars or containers carrying cargo to a location that is not a "port facility" (as such term is used in the preceding sentence) may be rerouted over other rail lines selected by and available to the Railroad operating such railcars (e.g., in the case of UP, over the Drill Track). Notwithstanding the prohibition on switching of rail cars on the Rail Corridor set forth above, the Railroads may conduct switching activities at the Permitted Switching Locations on the following terms and conditions: (1) the switching of rail cars may be conducted from only one mainline track of the Rail Corridor at any one time and switching activities shall be conducted at the Permitted Switching Locations only during non-peak hours of Rail Corridor operations, (2) Through Train movements on the Rail Corridor shall be given dispatch priority over switching movements, and (3) except for repaying the Railroads the cost of any Additional Capital Improvements (as set forth in Section 8.6), funds in the Reserve Account may not be used for the purpose of causing such switching activities no longer to occur on the Rail Corridor until such time as Owner has received all payments to which Owner is entitled under Paragraphs (5), (6) and (7) of Section 7.3(b).

(c) Neither POLA, POLB nor ACTA will require the Railroads to operate Through Trains powered by electric locomotives on the Rail Corridor unless the Railroads voluntarily agree thereto, provided, however, if electrification of the Rail Corridor is otherwise required, such requirement shall not be a basis on which any party may terminate this Agreement, but if legally permissible, a Railroad may satisfy the requirement to use electric powered locomotives by using locomotives powered by an alternative energy source acceptable to the appropriate government entities.

(d) To the extent that some or all of the projects listed on Exhibit A-1 have not been completed by Substantial Completion ACTA shall use its best efforts to complete all such projects no later than six months after Substantial Completion. If it appears that any such projects may remain uncompleted at such six-month date, then the Operating Committee may take such action as it deems appropriate to expedite completion of such projects (and the parties agree that any actions taken to expedite the completion of the projects described as items 1.B through 1.D of Section A-1 shall be included as Net Project Costs). ACTA shall provide regular status reports to the Operating Committee on any such projects that it appears may not be completed by Substantial Completion.

**2.3 Drill Track.** The Drill Track may be used only by UP, for the purpose of operating Local Trains (except as otherwise provided in this Agreement). UP's use of the Drill Track shall be exclusive (subject to Section 2.4) and shall be governed by the Drill Track Operating Agreement.

#### **2.4 Detours.**

(a) In the event of a complete blockage of the mainline Tracks on the Rail Corridor which will cause a Significant Delay, each Railroad shall provide to the other Railroads detour routes over any of its available rail routes (including over the Drill Track and the UP San Pedro Branch), adequate and sufficient to provide access to and from the Ports, on the terms of any detour agreement between or among the Railroads which then may be in effect with respect to such detour route or, if no such agreement is in effect, then on the terms of the Standard Form for Detour Agreement adopted by the Association of American Railroads ("**Standard Detour**

**Agreement**”) (provided that, with respect to such detours over the UP San Pedro Branch, access shall be provided to each of the Railroads on an equal and nondiscriminatory basis). The parties hereto acknowledge that BNSF’s Harbor Subdivision route is available as a detour route only through June 29, 2003.

(b) The provisions of Section 2.4(a) shall not be applicable to delays or blockages occurring as a result of planned construction or maintenance of the Rail Corridor, except that:

(i) On the conditions that: (x) the Joint Use Construction Projects have been completed and any connections thereto which are required by this Agreement or the UP C&M Agreement have been constructed, (y) Owner or ACTA has double tracked UP’s Wilmington Branch between Slauson Avenue and 60th Street, and (z) the connection Track described in clause (d) of the definition of “Rail Corridor” has been completed (the foregoing conditions, however, shall apply only if the detour is over UP’s Wilmington Branch), if, during construction of the trenched portion of the Rail Corridor, BNSF’s crossing of its Harbor Subdivision and the Rail Corridor in the vicinity of Slauson Avenue must be disconnected, and the construction of a shoo-fly or other alternative temporary facilities is not feasible or is impractical, either on the Rail Corridor or on adjacent property, then, upon at least 30 days’ prior written notice from Owner or ACTA, UP shall provide to BNSF, and BNSF shall use, subject to Owner’s or ACTA’s reimbursement of BNSF’s increased operating costs and service penalties payable by BNSF as a result of such detour, rail freight service operating rights over either the UP San Pedro Branch or UP’s Wilmington Branch on the terms of a detour agreement then in effect between BNSF and UP with respect to such branch or, if no such agreement is in effect, then on the terms of the Standard Detour Agreement, until such time as such crossing of the Harbor Subdivision may be reconnected, which Owner and ACTA commit shall not be longer than 90 days, provided that UP shall not be obligated to construct any connections that may be necessary to allow for such detour.

(ii) On the conditions that: (x) the Joint Use Construction Projects have been completed and (y) any connections thereto which are required by this Agreement or the UP C&M Agreement have been constructed, and subject to the payment to UP of the applicable amounts set forth on Exhibit F hereto as the sole charge for such use (responsibility for the payment of such amounts, as between Owner and ACTA, on the one hand, and BNSF, on the other, shall be governed by the ATSF Purchase Agreement), if construction of the trenched portion of the Rail Corridor has been commenced but such construction will not have reached Substantial Completion on or before the “**Put Expiration Date**” (currently June 30, 2003, and as the same may be extended) under the Shared Use Agreement (Harbor Subdivision and Mission Tower Segment) between ATSF and The Los Angeles County Metropolitan Transportation Authority, then UP agrees that if Owner or ACTA so request, effective on the day before the Put Expiration Date, and upon at least 30 days’ prior written notice from Owner or ACTA, UP shall provide to BNSF rail freight service operating rights over UP’s Wilmington Branch, on the terms of a detour agreement then in effect between BNSF and UP with respect to

such branch or, if no such agreement is in effect, then on the terms of the Standard Detour Agreement (without any charge other than as provided in this paragraph (ii)), until such time as construction of the Rail Corridor has reached Substantial Completion, provided that UP shall not be obligated to construct any connections that may be necessary to allow for such detour.

(iii) If construction of the trenched portion of the Rail Corridor has been commenced but such construction will not have reached Substantial Completion on or before the Put Expiration Date, then UP agrees that, effective on the day before the Put Expiration Date, Owner or ACTA (each in its discretion) may provide to BNSF (and UP shall permit) overhead rail freight service operating rights over the UP San Pedro Branch until such time as construction of the Rail Corridor has reached Substantial Completion, and if such operating rights are so provided, BNSF shall (x) install or pay for any capital improvements necessary for its trains to access or leave the UP San Pedro Branch (UP and BNSF acknowledge that BNSF presently has the physical connections necessary to access and leave the UP San Pedro Branch at Hobart and at Thenard Crossing), and (y) pay to UP or the entity responsible for maintaining and operating the UP San Pedro Branch, as reimbursement for maintenance and operations expenses on the UP San Pedro Branch during the period of such joint use, an amount equal to Twenty-four Cents (\$0.24) per car mile as the sole charge for such use (which amount shall be adjusted to reflect changes in the RCAF from and after December 22, 1994), with such rail freight service operating rights otherwise to be on the terms of the Standard Detour Agreement (without any charge other than as provided in this paragraph (iii)), except that UP and BNSF each shall be provided equal and nondiscriminatory access to the UP San Pedro Branch during such period of joint use.

Owner or ACTA either shall request the detour described in paragraph (ii) above, or shall make available the detour described in paragraph (iii) above, provided that all of the conditions specified in either paragraph (ii) or paragraph (iii), as applicable, have been satisfied. However, nothing herein shall be deemed to limit Owner's or ACTA's right to obtain an extension of the Put Expiration Date, and BNSF agrees to accept the rights that it would acquire as a result of any such extension, provided that BNSF shall not be required to accept any additional or different obligations, incur any additional costs, or accept any additional or different restrictions on its rights, except where BNSF agrees to such in an amendment to its agreement with Los Angeles County Metropolitan Transportation Authority.

## **2.5 Design and Operating Principles; Operating Committee.**

(a) The Rail Corridor and the Project shall be designed, operated, maintained and dispatched in a manner that promotes efficient and competitive freight rail service to and from the Ports, and in a manner that does not discriminate among any of the Railroads or between POLA and POLB. Notwithstanding the foregoing, the Rail Corridor and the Project will not be designed to eliminate switching for the Permitted Switching Locations or to avoid any delays that such switching may cause.



(b) At least 120 days prior to the Estimated Completion Date, the Operating Committee, acting reasonably and in good faith, shall establish a performance standard and rail operating procedures for the Rail Corridor, which performance standard and operating procedures shall be designed to achieve and implement the principles and goals of the Rail Corridor and the Project consistent with the provisions of this Agreement. The Operating Committee shall have the right and obligation to arrange for, and to establish, specific rules and regulations to implement the standards and procedures set forth in this Agreement relating to dispatching, maintenance, capital expenditures (including establishing guidelines and criteria, including, if appropriate, specific units of measurement, for determining whether the replacement of components of the Track and the Track Support Structures will be treated as a capital item, and paid as a Capital Expense, or a maintenance item, and paid as an M&O Charge) and operation of the Rail Corridor and, subject to the provisions of the Port Rail Agreements, the Port-Owned Tracks. Such rules and regulations may be updated or modified from time to time by the Operating Committee. Each Railroad shall cause its employees and agents to observe the performance and operating standards, and to obey the rules and regulations, adopted by the Operating Committee.

(c) Any decision to be made by the Operating Committee shall require the affirmative votes of a majority of the members of the Operating Committee (*i.e.*, as of the date of this Agreement, a decision would require at least three affirmative votes), unless a provision of this Agreement expressly requires a unanimous vote. Notwithstanding the foregoing, any decision of the Operating Committee relating to the Port-Owned Tracks and/or the Port Facilities shall require that POLA (with respect to the Port-Owned Tracks and/or Port Facilities located within POLA's Port area, as shown on the Map) or POLB (with respect to the Port-Owned Tracks and/or Port Facilities located within POLB's Port area, as shown on the Map), as the case may be, affirmatively vote in favor of such decision. If a majority of the members of the Operating Committee is unable to agree upon any decision or any action to be taken under this Agreement, including selection of the Corridor Dispatcher or the Corridor Maintenance Contractor, or the replacement of any of such entities, or the approval or adoption of an annual maintenance and capital plan or the budgets therefor, then any member of the Operating Committee shall have the right to submit such matter to arbitration pursuant to Section 14.4, provided, however, that no arbitrator shall have the authority to order implementation of a decision within POLB's Port area or POLA's Port area unless POLB or POLA, as the case may be, approves the decision.

(d) The Operating Committee shall hold its first meeting no later than April 1, 1999 (on a date and at a place to be agreed upon by the Operating Committee), at which meeting the Operating Committee (among other things) shall adopt procedures for conducting future meetings. Prior to Substantial Completion, the Operating Committee shall meet periodically on such dates as the Operating Committee determines to be necessary to ensure that joint rail operations on the Rail Corridor can commence promptly upon Substantial Completion. During the first six months after commencement of joint rail operations, the Operating Committee shall meet at least monthly, and thereafter such meetings shall be held as often as determined by the Operating Committee, provided that such meetings shall be held no less frequently than annually.

(e) The Operating Committee shall be responsible for selecting the Corridor Dispatcher and the Corridor Maintenance Contractor (and any other contractors as may be necessary from time to time to provide security, communications, inspection, maintenance, construction, repair and other services for the Rail Corridor). Promptly after the Operating Committee's selection of the Corridor Dispatcher and the Corridor Maintenance Contractor (or any other contractors that from time to time may provide services for the Rail Corridor pursuant to the provisions of this Agreement), ACTA shall enter into an agreement with such entity on the business terms specified by the Operating Committee. No such contract, however, may be for a term in excess of five years without the unanimous consent of all members of the Operating Committee.

(f) Notwithstanding the provisions of this Section 2.5, Section 3.5, Section 4.2, or Section 8.2, the Operating Committee may not amend the provisions of this Agreement, take actions or adopt standards, rules or procedures that would conflict with the terms of this Agreement.

### **ARTICLE III**

#### **DISPATCHING**

**3.1 Dispatcher.** From and after Substantial Completion, dispatching service for all train movements on and within the Rail Corridor, on all Port-Owned Tracks and to all Port Facilities shall be subject to the direction and control of the entity ("**Corridor Dispatcher**") selected by the Operating Committee, which initial selection shall be made at least 120 days prior to the Estimated Completion Date. The Corridor Dispatcher may not be either UP alone or BNSF alone, unless unanimously approved by all members of the Operating Committee.

**3.2 Dispatch Priority.** Following Substantial Completion, all train movements on and within the Rail Corridor, on all Port-Owned Tracks and to or from all Port Facilities shall be dispatched in accordance with the following general principles:

(a) As among the Railroads, all trains shall be dispatched on a nondiscriminatory basis.

(b) All Through Trains shall have priority over (i) any Local Trains and Repositioning and Crossing Movements using or crossing the Rail Corridor, and (ii) switching activities at the Permitted Switching Locations.

(c) All Through Trains shall be dispatched on a "first-come, first-served" basis, provided that, in the event of an emergency or other extraordinary circumstance which is beyond the reasonable control of the Railroad experiencing such circumstance, special priority may be authorized upon demonstration of such emergency or other extraordinary circumstance to the Corridor Dispatcher. Upon demonstration of an emergency or other extraordinary circumstance to the Corridor Dispatcher, a Through Train that reaches a Rail Corridor access point after another Through Train of equal priority nevertheless may be given priority by the Corridor Dispatcher over such earlier train (without discrimination as to the Railroad operating either such train).

(d) A Track will be constructed connecting Watson Yard to the Rail Corridor, which connection Track may cross the Drill Track and yard Tracks in the vicinity of Milepost 500.3. With respect to trains entering the Rail Corridor northbound from Watson Yard or leaving the Rail Corridor southbound to Watson Yard, the Corridor Dispatcher shall control the crossing access of all Tracks crossing the connection Track to be built between the Rail Corridor and Watson Yard (including the Drill Track) and, as between BNSF and UP, BNSF's trains shall have priority over UP's trains operating on the Tracks which are crossed by the connection Track between the Rail Corridor and Watson Yard, provided that (i) the Corridor Dispatcher shall give UP at least two hours prior notice of any such BNSF trains entering or leaving the Rail Corridor to or from Watson Yard, (ii) if UP notifies the Corridor Dispatcher that UP will need to conduct switching operations on its Tracks crossed by the connection Track between the Rail Corridor and Watson Yard, UP shall have at least one hour windows following each BNSF train movement in which to conduct such switching operations, (iii) no trains, railcars, or equipment may be stopped, stored or positioned in a manner that blocks any authorized train movements on such connection Track or any rail crossings thereof, and (iv) liability for train operations on and across such connection Track shall be as set forth in Article XI of this Agreement.

(e) If the members of the Operating Committee unanimously agree, certain classes of freight and cargo may be given priority over other classes of freight and cargo.

(f) Owner or ACTA may construct as part of the Project a Track connecting the easterly-most main line Track of the Rail Corridor to a portion of SPT's San Pedro Branch acquired as an easement by Owner south of Dolores Yard at approximately Milepost 500.6 on such San Pedro Branch (the "**SPB Connection Track**"). UP uses the segment of the San Pedro Branch covered by such easement between Milepost 500.7 and the northeasterly boundary line of BNSF's Harbor Subdivision at approximately Milepost 500.9 ("**SPB Segment**") in connection with local freight rail operations. The SPB Segment will not be part of the Rail Corridor's main line Tracks, but could be used as an additional access route to the Ports. If the SPB Connection Track is constructed, (i) the Corridor Dispatcher shall control access to, and the operation of all trains and equipment on, the SPB Connection Track and the SPB Segment, as well as the crossing access of any Tracks crossing the SPB Connection Track, and (ii) the SPB Connection Track and the SPB Segment shall be deemed to be Port-Owned Tracks. Trains using the SPB Connection Track and the SPB Segment to move to or from the Rail Corridor shall have priority over all other trains or switching movements, including priority over trains operating on any Tracks that are crossed by the SPB Connection Track, provided that (i) the Corridor Dispatcher shall give UP at least two hours prior notice of any trains entering the SPB Connection Track or the SPB Segment, (ii) if UP notifies the Corridor Dispatcher that UP will need to use the SPB Segment, UP shall have at least a two hour window following each such train movement to or from the Rail Corridor in which to conduct switching operations on the SPB Segment, (iii) no trains, railcars or equipment may be stored or positioned in a location that blocks any train movements on the SPB Connection Track or on the SPB Segment (except that UP shall have the right to temporarily position railcars or equipment on the SPB Segment in connection with UP's local freight rail operations, provided that such railcars and equipment shall be removed by UP on two hours notice from the Corridor Dispatcher as provided above), and (iv) liability for train operations on and across the SPB Connection Track and the SPB Segment shall be as set forth in Article XI of this Agreement.

**3.3 Diversions.** In the event that the Corridor Dispatcher determines that there will be a Significant Delay to a Through Train of any Railroad in gaining access to the Rail Corridor, the Corridor Dispatcher shall notify such Railroad of the Significant Delay, and such Railroad then shall have the right to divert the delayed Through Train to an alternate rail line owned by such Railroad or over which such Railroad has a rail service easement or trackage rights. In addition, in the event of any such Significant Delay, if any Railroad has not elected to divert its Through Trains to an alternate rail line owned by such Railroad or over which such Railroad has a rail service easement or trackage rights, the Corridor Dispatcher may divert Through Trains to the UP San Pedro Branch, with (i) UP and BNSF to pay to the Corridor Dispatcher dispatching charges, calculated on a train mile basis, (ii) UP and BNSF to pay to the entity responsible for maintaining and operating the UP San Pedro Branch, as reimbursement for maintenance and operations expenses on the UP San Pedro Branch, its proportionate share of such expenses, allocated on a gross ton mile basis comparing its use of the UP San Pedro Branch to the total use of the UP San Pedro Branch by all of the Railroads, and with the Through Trains of each of the Railroads to be provided equal and nondiscriminatory access to the UP San Pedro Branch and (iii) UP and BNSF to pay Use Fees on diverted Through Trains (except in the case of a complete blockage as provided in Section 7.3(f)). The Operating Committee shall establish guidelines and parameters for the Corridor Dispatcher to determine the order in which trains are to be diverted (e.g., the order of priority for diverting trains consisting primarily of empty railcars or containers, trains consisting of railcars only, trains consisting of containers only, Local Trains, Through Trains, etc.).

**3.4 Dispatch Jurisdiction.** Commencing on the date of Substantial Completion, dispatching jurisdiction for train movements approaching, on and leaving the Rail Corridor, on all Port-Owned Tracks and to and from Port Facilities, shall be as follows:

| <u>Location</u>   | <u>Dispatch Jurisdiction</u>  |
|---|---|
| (i) east of the Railroads' respective staging facilities in Barstow, Colton and Yermo   | each Railroad shall have exclusive dispatch control over its trains   |
| (ii) Through Trains operating between the Railroads' staging facilities and the northerly limits of the Rail Corridor (as shown on the Map), and trains leaving the Rail Corridor at its northerly limits | Corridor Dispatcher and Railroad dispatcher shall coordinate, but each Railroad shall have exclusive dispatch control over its trains |
| (iii) All trains entering and operating on the Rail Corridor or on any Port-Owned Tracks (other than Port-Owned Tracks that are subject to the Port Rail Agreements)                                      | Corridor Dispatcher and Railroad dispatcher shall coordinate, but Corridor Dispatcher shall have exclusive control over all trains    |

|   |   |
|---|---|
| (iv) All trains entering or operating on any Port-Owned Tracks that are subject to the Port Rail Agreements | Corridor Dispatcher and Port Rail Operator shall coordinate, but, subject to <u>Section 3.6</u> , Port Rail Operator shall have exclusive control over all trains |
|---|---|

Following Substantial Completion, the Railroads and the Corridor Dispatcher shall cooperate with each other to ensure that all train movements will be coordinated with the Corridor Dispatcher and the Railroads to assure, to the extent reasonably possible, the efficient and uninterrupted flow of trains to, from and on the Rail Corridor, on all Port-Owned Tracks, and to and from Port Facilities. Dispatching of the Drill Track shall be governed by the Drill Track Operating Agreement, the dispatching provisions of which shall be consistent with the terms of this Agreement.

**3.5 Dispatching Standards and Dispute Resolution.** At least 120 days prior to the Estimated Completion Date, the Operating Committee shall establish dispatching regulations and standards relating to the Corridor Dispatcher's performance so as to provide efficient and competitive operations entering, leaving and operating over the Rail Corridor, on any Port-Owned Tracks and to and from any Port Facilities. Such dispatching regulations and the standards relating to the Corridor Dispatcher's performance may be updated or modified from time to time by the Operating Committee. The Operating Committee shall have the right and obligation to monitor such performance and operations to ensure compliance with such standards. The Operating Committee shall meet periodically with the Corridor Dispatcher to identify and implement by mutual agreement methods to eliminate or reduce any problems relating to dispatching (and any member of the Operating Committee may call a special meeting of the Operating Committee if in the reasonable opinion of such member there are significant problems with the Corridor Dispatcher's performance). In the absence of a majority decision by the Operating Committee, any disputes regarding dispatching shall be resolved, if necessary, pursuant to the arbitration procedures set forth in Section 14.4. Each Railroad shall cause its employees and agents to obey the orders and directions of the Corridor Dispatcher.

**3.6 Dispatching of Port-Owned Tracks.** If and to the extent that the Port Rail Agreements provide that the Port Rail Operator shall be responsible for dispatching any Port-Owned Tracks, the Port Rail Agreements shall control with respect to those Port-Owned Tracks, and any provisions to the contrary contained in this Agreement with respect to dispatching such Port-Owned Tracks are deemed superseded by the Port Rail Agreements until the applicable Port Rail Agreement is terminated or expires in accordance with its respective terms, except that at any time after Substantial Completion, the Operating Committee shall have the right to affirmatively elect to cause the dispatching of the Port-Owned Tracks to be shifted to, and undertaken by, the Corridor Dispatcher.

## ARTICLE IV

### LOCOMOTIVES AND CREWS; CORRIDOR OPERATION

#### 4.1 Locomotives and Crews.

(a) Each Railroad shall, at its sole cost and expense: (i) use its own equipment and crews for all train movements on the Rail Corridor and all Port-Owned Tracks (subject to the provisions of the Port Rail Agreements and any existing written agreement to which either or both of the Railroads are parties), (ii) maintain an adequate, experienced, licensed (where necessary) and competent staff to operate such Railroad's trains on the Rail Corridor and all Port-Owned Tracks, and (iii) maintain its equipment in compliance with all applicable FRA, federal, state and local governmental laws and requirements. All trains operating on the Rail Corridor and on Port-Owned Tracks shall be adequately powered to run at maximum authorized track speeds (provided, however, that underpowered trains may be permitted to use the Rail Corridor, subject to the control of the Corridor Dispatcher, if such trains will not interfere with or delay other trains using the Rail Corridor) and otherwise in such condition that the efficient use and operation of the Rail Corridor and all Port-Owned Tracks will not be disrupted. Neither Owner nor ACTA shall have any obligation to inspect, maintain, refuel, service or repair any equipment used by any of the Railroads, to clear any derailed trains, or to provide refueling, servicing or repair facilities or equipment to any of the Railroads, in connection with such Railroad's use of the Rail Corridor or the Port-Owned Tracks.

(b) Each Railroad shall be solely responsible for providing any security services or measures it deems necessary or desirable for its property and equipment, and all cargo, rail cars and equipment in its possession or control. Each Railroad acknowledges that the Owner's status as the owner of the property on which the Rail Corridor is to be constructed, and ACTA's status as the lessee, licensee or permittee with respect to such property, shall not impose any duty or obligation on either Owner or ACTA to provide any security services or measures to protect any property or equipment owned or used by the Railroads from theft, vandalism or damage, and Owner and ACTA disclaim any such duty or obligation.

(c) Each Railroad shall comply, at its sole cost and expense, with all lawfully enacted federal, state and local laws, rules, regulations, permits and orders then in effect and applicable to its operations on the Rail Corridor and the Port-Owned Tracks. POLA, POLB and ACTA each shall comply, at its sole cost and expense, with all lawfully enacted federal, state and local laws, rules, regulations, permits and orders then in effect and applicable to its respective activities with respect to the Rail Corridor and the Port-Owned Tracks. If any party fails to comply with its obligations under this Section 4.1(c), and such failure results in a fine, penalty, cost or charge being imposed or assessed on or against any other party to this Agreement, the party which failed to comply with its obligations shall promptly reimburse, defend, indemnify and hold the other parties harmless with respect to such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith. Each of the parties to this Agreement shall cooperate reasonably and in good faith with the other parties to ensure that the use of and operations on the Rail Corridor and Port-Owned Tracks comply with all lawfully enacted federal, state and local laws, rules, regulations, permits and orders then in effect.



#### **4.2 Corridor Operation.**

(a) At least 120 days prior to the Estimated Completion Date, the Operating Committee shall agree upon rules and regulations governing rail operations relating to the Rail Corridor and all Port-Owned Tracks (including the clearing of derailed trains), all of which shall be designed to achieve and implement the principles and goals of the Rail Corridor and the Project set forth in Section 2.5(a). Each Railroad shall cause its employees and agents to observe such rules and regulations.

(b) The Operating Committee shall meet periodically to identify and implement methods to monitor compliance with the rules and regulations adopted by the Operating Committee and eliminate or reduce any problems relating to operations on the Rail Corridor and the Port-Owned Tracks. Any member of the Operating Committee may call a special meeting of the Operating Committee if in the reasonable opinion of such member there are significant problems with such operations. In the absence of a majority decision by the Operating Committee, any disputes regarding operations on such tracks shall be resolved if necessary, pursuant to the arbitration procedures set forth in Section 14.4.

(c) As among the parties to this Agreement, and except as otherwise expressly provided in this Agreement or in another agreement with one of the Railroads, Owner's status as the owner of the property on which the Rail Corridor is to be constructed, and ACTA's status as the Owner's lessee, licensee or permittee with respect to such property, shall not impose any duty or obligation on either Owner or ACTA to inspect, maintain, service, dispatch, operate or repair the Rail Corridor, the Port-Owned Tracks or the UP San Pedro Branch, or to make any capital improvements or replacements thereto, and Owner and ACTA disclaim any such duty or obligation.

(d) If and to the extent that the Port Rail Agreements provide that the Port Rail Operator shall be responsible for overseeing and coordinating operations on any Port-Owned Tracks, the Port Rail Agreements shall control with respect to those Port-Owned Tracks, and any provisions to the contrary contained in this Agreement regarding operations on such Port-Owned Tracks are deemed superseded by the Port Rail Agreements until the applicable Port Rail Agreement is terminated or expires in accordance with its respective terms. As of the date hereof, the Port Rail Operator is responsible for switching operations over, and for maintaining and dispatching, the Port-Owned Tracks within the area shown on Exhibit A attached hereto.

### **ARTICLE V**

#### **ACCESS TO PORT FACILITIES**

##### **5.1 Access to Port Facilities.**

(a) Subject only to the exceptions set forth in Section 5.2, access and rail operations to and from all Port Facilities, and over all Track and Track Support Structures owned by POLA and/or POLB, is hereby granted to each of the Railroads on an equal and nondiscriminatory basis, provided that the physical connections necessary to provide such access exist or Owner or ACTA have otherwise agreed to construct such connections, and provided

further that until the North End Grade Separation has been completed, access over and dispatching at the existing at-grade rail crossing at Redondo Junction shall be as set forth in agreements between BNSF and UP governing such matters.

(b) ACTA, POLA and POLB each agree, for itself only, that upon Substantial Completion, no access fee shall be imposed upon any Railroad by ACTA, POLA and/or POLB to access any Port Facilities except as may be set forth in any agreements between or among ACTA, POLA and/or POLB and the Railroad to be charged the access fee. ACTA, POLA and/or POLB are not obligated to, but may, construct any new or modify any existing Track, Track Support Structures or connections to provide such access (except as they otherwise may have agreed).

(c) Each of the Railroads hereby acknowledges and represents to Owner, ACTA and the other Railroad that, except as set forth in Section 5.2, it does not own any Tracks within the Port areas (as such Port areas are shown on Page 4 of the Map) over which the other Railroad does not have nondiscriminatory trackage rights.

**5.2 Exceptions.** The following facilities and services are specifically excepted from the general access provisions set forth in Section 5.1:

(a) UP shall have the exclusive right to use and operate the ICTF and, subject to existing interchange rights, those portions of Dolores Yard and J Yard which are owned by or subject to an easement in favor of UP.

(b) UP shall have the exclusive right to use and operate the Mead Yard (except for the limited right for BNSF to operate trains through Mead Yard to Terminal Island on the terms attached hereto as Exhibit C), subject to existing interchange rights, if any, and the exclusive right to serve (i) the Dow Chemical Facility, (ii) the Arco Calciner Facility, and (iii) the Toyota Distribution Facility, which facility shall be exclusive to UP (A) through December 31, 2006 or, if the main Toyota lease is extended, through the expiration date of such extended lease, but in no event later than December 31, 2016, or (B) for so long as such facility exists at that location, whichever is shorter.

(c) BNSF shall have the exclusive right to use and operate the Watson Yard, subject to existing interchange rights, if any.

(d) Notwithstanding the foregoing exclusive rights, any industry currently open to reciprocal switching at any of the locations specified in this Section 5.2 shall remain open to such reciprocal switching and, following the date of this Agreement, any Railroad possessing such rights may, by written agreement with any other Railroad, change any existing reciprocal switching or exclusive switching agreements at any of the locations specified in this Section 5.2, but only in a manner that does not discriminate against any Railroad.

**5.3 Modification of Existing Agreements.** In order to implement the general access provisions set forth in Section 5.1, the parties agree that if and to the extent that the terms and conditions of any of the agreements listed on Exhibit D attached hereto conflict with the terms and conditions of this Agreement, then, effective as of the date of Substantial Completion of the Rail Corridor, this Agreement shall supersede and control those conflicting

terms and conditions without the necessity of any further agreement between or among the parties to such agreements. The Railroads agree that, notwithstanding anything to the contrary in this Agreement, neither Owner nor ACTA shall have any obligation to resolve, or any liability for, any dispute between the Railroads with respect to such agreements listed on Exhibit D.

## **ARTICLE VI**

### **ACCESS TO RAIL CORRIDOR AND PORT-OWNED TRACKS**

#### **6.1 Access to Rail Corridor and Port-Owned Tracks.**

(a) On and subject to the terms and conditions of this Agreement, Owner and ACTA hereby authorize each of the Railroads to operate such Railroad's trains on and over the entire length of the Rail Corridor (and, if applicable pursuant to the provisions of this Agreement, the UP San Pedro Branch), all Port-Owned Tracks and all existing and future Tracks and Track Support Structures owned by Owner, POLA and/or POLB (other than the Drill Track) for the purpose of providing freight rail service to and from the Ports, which authorization is hereby made to each of the Railroads on an equal and nondiscriminatory basis. The authorization granted hereby, however, does not, and shall not be construed to give or grant the Railroads any ownership interest of any kind or character in or to the Rail Corridor, the UP San Pedro Branch, or any Port-Owned Tracks, or any other real or personal property of ACTA, POLA and/or POLB, and each Railroad specifically acknowledges that it has no ownership interest in any of such property (except as may have been reserved in connection with the transactions described in the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, respectively, and then only to the extent of such reservations). In addition: (i) POLA hereby grants to each of UP and BNSF a non-exclusive overhead trackage rights license for the operation of Through Trains on and over any portion of the Rail Corridor where neither Railroad currently has a reserved rail freight service easement, which trackage rights license (x) shall be subject to the approval of (or exemption by) the STB, (y) shall be for a term of 66 years (renewable thereafter on terms and conditions reasonably acceptable to POLA and the Railroads), and (z) shall otherwise be on all of the same terms and conditions set forth in this Agreement; and (ii) promptly after the date of this Agreement, each of UP and BNSF shall grant to the other Railroad a permanent, non-exclusive overhead trackage rights license for the operation of Through Trains on and over any portion of the Rail Corridor property over which the granting Railroad previously reserved a rail freight service easement, all without charge or payment (other than the fees payable in accordance with Article VII), provided, however, such overhead trackage rights shall be effective only upon Substantial Completion and receipt of any required approval from the STB (and any other federal agency with jurisdiction). Each Railroad which previously reserved a rail service easement over any portion of the Rail Corridor property acquired by Owner from such Railroad consents and agrees to such overhead trackage rights operations by the other Railroad on such portion of the Rail Corridor (but not the Drill Track, except as set forth in Sections 2.4 and 3.2(d)). In addition to the foregoing, the parties acknowledge that the Port Rail Operator will operate trains, from and after Substantial Completion, on and over such portions of the Rail Corridor as may be necessary for the Port Rail Operator to conduct its operations pursuant to the Port Rail Agreements (for example, to move trains from Port Facilities to or from Watson Yard, Dolores Yard, etc.).

(b) Notwithstanding the equal and nondiscriminatory nature of the authorization granted in this Article VI, the parties hereto agree that the agreements identified on Exhibit E attached hereto will not be required to be modified in the manner described in Section 5.3, and any provisions set forth in such agreements which favor one Railroad over another shall be allowed to remain in effect (unless, with respect to the agreement governing the Redondo Interlocker identified on Exhibit E hereto, such agreement otherwise is terminated or transferred to Owner pursuant to the ATSF Purchase Agreement).

(c) All points of connection to the Rail Corridor shall be subject to sound operating procedures and the design criteria of the Project engineers, and shall otherwise be subject to Owner's and the connecting Railroad's approval, which approval shall not be unreasonably withheld.

**6.2 Prohibition Against Liens.** No Railroad shall cause, suffer or otherwise permit the filing of any mortgage, deed of trust, judgment lien or mechanic's, materialman's or other lien against any property owned or controlled by Owner or ACTA. However, in the event such filing does occur, such Railroad shall cause the same to be discharged of record within 30 days after the date of filing of the same.

**6.3 Possessory Interest Taxes.** WITHOUT DEROGATING FROM THE LIMITATIONS ON THE RAILROAD'S RIGHTS WITH RESPECT TO THE RAIL CORRIDOR AND THE PORT-OWNED TRACKS PROVIDED FOR HEREIN, THIS AGREEMENT MAY CREATE A POSSESSORY PROPERTY INTEREST IN EACH RAILROAD FOR TAX PURPOSES, THE RAILROADS MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED, AND NEITHER ACTA, POLA NOR POLB SHALL HAVE ANY LIABILITY FOR ANY SUCH TAX.

## ARTICLE VII

### M&O CHARGES AND USE FEES

#### 7.1 Establishment of Right to M&O Charges, Use Fees, Container Charges and Port Advances.

(a) In consideration of ACTA's obligation to construct, finance and administer activities in connection with the Rail Corridor and the execution and entering into of this Agreement, the Permit and the Master Trust Indenture, ACTA (or any trustee for Bonds issued by ACTA) shall have the sole right and obligation to receive, hold and expend in accordance with the terms of this Agreement all M&O Charges, Use Fees, Container Charges and Port Advances and all other funds, assets or amounts to which it may be entitled hereunder ("ACTA Revenues"). Except as expressly provided in this Agreement, no entity (including the Railroads, POLA, POLB, or any entity in which POLA and POLB are members other than ACTA) shall have any right to receive, hold and expend ACTA Revenues to which ACTA is entitled under this Agreement.

(b) In further consideration of ACTA's obligations and the execution and entering into of such documents, the Railroads, POLA and POLB agree to take all actions as may be necessary or appropriate to effectuate the payment and receipt of the ACTA Revenues to be received by ACTA pursuant to this Agreement. Furthermore, POLA and POLB will not do or permit anything to be done, or omit or refrain from doing anything (including the exercise of their rights under Section 14.3) in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of this Agreement or which otherwise would interfere with ACTA's right to receive the ACTA Revenues.

(c) ACTA shall have the right to pledge, assign and transfer without recourse all of its rights subject to the terms of this Agreement to receive all or a portion of the ACTA Revenues, and any other rights or remedies as granted to ACTA hereunder, to a third party trustee or other fiduciary in connection with the ACTA Financing (as defined below). POLA, POLB and the Railroads each agree that upon receipt of a written notice from ACTA that it has assigned its rights to payments of all or any portion of the ACTA Revenues to such a trustee or fiduciary, POLA, POLB and the Railroads each shall make all such payments directly to the trustee or fiduciary until receipt of further payment instructions signed by both ACTA and such trustee or fiduciary.

(d) All payments by the Railroads and Owner hereunder, including, without limitation, payments of the ACTA Revenues, shall be an absolute obligation of Railroads or Owner, as applicable, and shall be made when due without deduction, setoff, reduction or any defenses of any kind or character unrelated to the mathematical calculation of amounts. Railroads and Owner expressly disclaim any interest in the ACTA Revenues and waive any defenses to enforcement by ACTA of any claim to such amounts and agree not to challenge ACTA's rights to such amounts.

## **7.2 M&O Charges.**

(a) Commencing on Substantial Completion, and subject to the other provisions of this Section 7.2, each Railroad shall be charged a Pro Rata Portion of the annual cost of operating, maintaining and repairing the Rail Corridor and the Port-Owned Tracks (including any storage tracks), taxes (including property or possessory interest taxes assessed against Owner, ACTA or the Railroads with respect to the Rail Corridor), premiums for the casualty insurance and business interruption insurance described in Section 11.2 with deductibles determined by the Operating Committee (which deductibles shall not, however, violate the requirements of the Master Trust Indenture, the Federal Loan and the ACTA Financing) and relating solely to the Rail Corridor and the Port-Owned Tracks (but not any casualty insurance premiums relating to automobiles, trucks or other wheeled equipment owned or leased by Owner or ACTA and not used solely in connection with operation or maintenance of the Rail Corridor or Port-Owned Tracks, which premiums shall be the responsibility of Owner or ACTA, as the case may be), costs of dispatching (including communication and signaling), the cost of maintaining and repairing communications facilities, signals and interlockers, security costs, debris removal, costs of maintaining and repairing rails, ties, ballast, undercutting, drainage and surfacing, and other repairs, and the costs and expenses of the entities or parties responsible for inspecting, dispatching, securing, maintaining and/or repairing the Rail Corridor and/or the Port-

Owned Tracks (including without limitation, the Corridor Dispatcher and the Corridor Maintenance Contractor) (and a charge for the reasonable overhead of such entities or parties) (all of the foregoing being collectively referred to herein as "**M&O Charges**"). Subject to Section 7.1(c), all such M&O Charges shall be paid by the Railroads to ACTA and placed by ACTA in a separate fund established by ACTA. ACTA shall use such fund for the sole purpose of promptly paying the costs and expenses identified in this Section 7.2. Except as expressly provided in this Section 7.2(a), none of ACTA, POLA or POLB shall be responsible for the payment of any M&O Charges covered by this Section 7.2(a). M&O Charges shall not include replacement costs except to the extent that the Operating Committee determines that such costs are not properly included in Capital Expenses. Notwithstanding anything to the contrary in this Section 7.2, for so long as the Port Rail Agreements are in effect, if and to the extent that the Port Rail Agreements provide for the maintenance, repair or replacement of the Port-Owned Tracks, or the dispatching, switching and operation thereon, the Port Rail Agreements shall control with respect to the payment of the costs and expenses for such matters, with the intent and understanding that the Railroads shall not be required to pay M&O Charges under this Agreement with respect to the maintenance, repair, replacement, dispatching or switching operations of the Port-Owned Tracks because the Railroads are obligated to make payments for such matters under the Port Rail Agreements.

(b) M&O Charges incurred in the maintenance and repair of Track and Track Support Structures of the Rail Corridor and the Port-Owned Tracks shall be pro-rated based on gross ton miles. All other M&O Charges identified in Section 7.2(a) shall be pro-rated based on train miles, including dispatching costs and costs and expenses incurred in the maintenance and repair of signals and communications systems (including (i) all grade crossing warning systems which involve totally separate systems from grade crossing warning systems protecting the Drill Track or other Tracks owned or operated exclusively by only one Railroad; and (ii) an equitably proportionate share of grade crossing warning systems serving both the Drill Track (or other Tracks owned or operated exclusively by only one Railroad) and the Rail Corridor and/or Port-Owned Tracks). The resulting amounts, collectively, shall be the Pro Rata Portions owed by each Railroad.

(c) Notwithstanding anything to the contrary set forth in this Section 7.2 or elsewhere in this Agreement, the M&O Charges shall not include (and none of the following shall be included in determining the Pro Rata Portion payable by any Railroad under this Agreement):

- (i) the costs to remediate hazardous materials conditions resulting from the activities of parties other than the Railroads or the Railroads' employees, contractors, shippers or invitees, the cost of which shall be borne entirely by Owner (nothing in this clause (i), however, shall supersede any hazardous material liability allocation provision in any other agreement between Owner and any of the Railroads);
- (ii) liability insurance policy premiums (if any) paid by Owner and/or ACTA to insure against the risks for which Owner and/or ACTA is liable under the terms of this Agreement;



(iii) any costs or expenses to maintain, repair or operate any Tracks or Track Support Structures: (x) within any of the Port Facilities listed in Section 5.2 (which costs and expenses shall be paid solely by the Railroad (or Railroads) which exclusively uses or operates such Port Facility, unless otherwise provided in a written agreement between or among such Railroad or Railroads and/or POLA and/or POLB), or (y) which comprise the Port-Owned Tracks and which are maintained and repaired by a third party (including the Port Rail Operator) or one of the Railroads pursuant to a written agreement (in which case such costs and expenses shall be paid in the manner set forth in such written agreement for so long as such agreement, or any renewal or replacement thereof, is in existence; thereafter, the costs and expenses to maintain, repair and operate such Port-Owned Tracks shall be covered by Section 7.2(b)), or as otherwise agreed in writing by Owner and Railroads;

(iv) costs and expenses incurred to repair, maintain, replace and operate the Drill Track or the portion of any connection Track located outside the boundaries of the Rail Corridor that leads to a facility or rail line owned or used or operated exclusively by only one Railroad, including the cost of constructing and maintaining all signals, turnouts and crossovers used to access the Rail Corridor from the Drill Track or such other facility or rail line owned or used or operated exclusively by only one Railroad, and vice versa, which costs and expenses shall be allocated between UP and Owner pursuant to the Drill Track Operating Agreement (in the case of the Drill Track) or, to the extent not located within the boundaries of the Rail Corridor, shall be paid solely by the Railroad which owns or exclusively uses or operates such facility or rail line to which the connection Track leads (except as otherwise may be provided in another written agreement to which such Railroad is a party); the Operating Committee shall determine which signals, if any, along the Rail Corridor shall be deemed related to the Drill Track for purposes of this clause (iv); or

(v) costs and expenses incurred to repair, maintain, replace and operate (A) the rail bridges for BNSF's Harbor Subdivision crossing over the Rail Corridor, and UP's La Habra Branch crossing over the Rail Corridor, which costs and expenses shall be paid solely by the Railroad(s) which operate(s) over such rail bridges and (B) the North End Grade Separation, which costs and expenses shall be paid by parties other than ACTA or Owner in accordance with separate agreements between BNSF and the commuter agencies which will operate over such bridge (except that any costs or expenses incurred to repair or replace such rail bridges or the North End Grade Separation as a result of a design defect (unless such design defect relates to a change requested by a Railroad) or a construction defect in the original construction shall be the responsibility of Owner or ACTA), but, notwithstanding this clause (v), the parties agree that (X) the costs of designing and constructing such rail bridges and the North End Grade Separation shall be a cost of the Project included in determining Net Project Costs, and (Y) as long as one of the Railroads is operating on the rail bridges described in clause (A) above, the cost of any capital replacement or improvement

to any such rail bridge shall be paid by such Railroad(s) from the Reserve Account described in Section 7.4.

(d) Nothing in this Agreement shall be deemed or construed as limiting the right of ACTA, POLA and/or POLB to require payment by the Railroads or others of any maintenance, operations, repair or replacement charges in connection with use of Port-Owned Tracks (including Tracks that will be included in the Rail Corridor) prior to Substantial Completion, which charges shall not exceed the actual costs of such maintenance, operation, repair and/or replacement activities.

### **7.3 Use Fees and Container Charges.**

(a) The Rail Corridor use fees set forth in Section 7.3(e) (“**Use Fees**”), the Container Charges set forth in Section 7.3(g), and the Shortfall Advances, if any, by POLA and POLB pursuant to Section 7.3(h), will be used (i) to pay Net Project Costs and (ii) to pay the other expenses, and fund, maintain and replenish the reserves relating to the Project and the use and operation of the Rail Corridor, all as described in Section 7.3(b) and the other provisions of this Article VII. Use Fees and Container Charges will be assessed and collected beginning upon the date of commencement of Through Train operations over the Rail Corridor north of West Thenard and south of 25th Street after Substantial Completion (*i.e.*, excluding test or training trips by trains). The Railroads shall not owe Use Fees or Container Charges for any Through Train or Local Train movements prior to commencement of such Through Train operations.

(b) Revenues generated by Use Fees and Container Charges shall be allocated and disbursed during each year to pay the following amounts on or before the date due in the order of priority set forth below:

1. The amount necessary each year (“**Annual Amount**”) to pay the following items (to the extent the following items are scheduled, budgeted or otherwise expected to be due and payable that year):

- (i) interest and principal due during such year with respect to the financing of the Project by ACTA (*i.e.*, ACTA’s financings other than the Federal Loan, Port Advances, Property Assembly Reimbursement and the Benefit Amount), which may include the Bonds and/or a series of debt offerings or financings and multiple tranches or levels of priority of indebtedness that may consist of short term, interim and long term financings or refinancings of prior financings (including, without limitation, refinancing of the Federal Loan under the Master Trust Indenture) or obligations to credit enhancers or swap or other hedge providers if incurred in connection with such financings or refinancings (collectively, “**ACTA Financing**”); and

- (ii) the amounts necessary to pay debt service on sums held in or debt incurred to fund any debt service reserve fund established in connection with the ACTA Financing (“**Required Debt Service Reserve**”), plus any amount necessary to replenish the Required Debt Service Reserve after draws thereon; and

(iii) the fees and charges of third party trustees, administrators, rating agencies, auditors, independent consultants, financial advisors, underwriters, attorneys or custodians incurred by Owner or ACTA in connection with the ACTA Financing, fees and costs incurred to obtain and renew letters of credit, bond insurance and other forms of credit enhancement facilities for the ACTA Financing and any amounts necessary to make any rebate payments to the United States or to otherwise comply with the provisions of the Internal Revenue Code.

2. To establish and maintain in effect the Reserve Account accumulating toward, or at the level of, the then current Reserve Account Target as provided in Section 7.4, subject to the restrictions on annual contributions specified in Section 7.4(c).

3. To pay the amounts due during such year with respect to the Federal Loan in accordance with its terms.

4. To pay ACTA's reasonable expenses each calendar year (including the partial year in which Substantial Completion occurs) relating to (i) the ongoing administration of the ACTA Financing and the Federal Loan, including compliance activities, (ii) administration of contracts for the Rail Corridor (including contracts with the Corridor Dispatcher and the Corridor Maintenance Contractor), and (iii) administrative duties related to the Rail Corridor (including legal and accounting work related to the Rail Corridor). Such payments will be based on ACTA's budget for such year for performance of such activities, which budget shall be provided to each member of the Operating Committee, with payments to ACTA to be made in monthly installments on the first day of each month commencing on the first day of such budget year. If after receipt of ACTA's final accounting for a year, ACTA's actual expenditures for performance of such activities for such year vary from the budget, any excess payment to ACTA shall be deducted from the following year's payments due to ACTA hereunder, and any shortfall, to the extent not covered by a Port Advance, shall be paid to ACTA from Use Fee and Container Charge revenues from the following year. Pursuant to Section 7.7, any member of the Operating Committee shall have the right to audit ACTA's records of the costs that are included hereunder.

5. To refund to POLA and POLB (as the case may be) the following amounts (collectively, "**Port Advances**"): (i) Net Project Costs advanced by POLA or POLB (either directly or through ACTA) prior to Substantial Completion that have not already been reimbursed to POLA or POLB from the proceeds of the financings or grants received by ACTA; (ii) Shortfall Advances made by either POLA or POLB pursuant to Section 7.3(h); (iii) amounts, if any, voluntarily advanced by POLA or POLB (either directly or through ACTA) in excess of the Shortfall Advances to pay all or a portion of the Annual Amount, the Federal Loan or any other obligation or liability of ACTA with respect to the Project; (iv) amounts, if any, voluntarily advanced by POLA and POLB after Substantial Completion, in excess of Shortfall Advances to cover the costs of ACTA specified in Section 7.3(b)(4) that have not already been reimbursed to POLA or POLB from the proceeds of the financings or grants received by ACTA; and (v) any amounts advanced by either POLA or POLB pursuant to Section 7.4(g). Port Advances shall bear interest from the date advanced at a rate per annum equal to the interest rate on six month

U.S. Treasury Bills, which rate shall be adjusted each January 1 and July 1, effective for the outstanding Port Advances on such date.

6. To refund to POLA and POLB the sum of \$200 million as reimbursement for a portion of amounts expended by POLA and POLB to acquire the property and related rights and interests necessary for the Project ("**Property Assembly Reimbursement**"). which amount shall not bear interest or otherwise be adjusted for the passage of time. POLA and POLB shall allocate between themselves the Property Assembly Reimbursement and shall notify ACTA in writing of such allocation prior to Substantial Completion. Notwithstanding the foregoing, POLA and POLB hereby authorize ACTA to deduct thirty-four percent (34%) of any amount it otherwise would pay either POLA or POLB under this Section 7.3(b)(6) and immediately deposit such amount in the Reserve Account, regardless of whether such payment causes the Reserve Account to exceed the Reserve Account Target. Any amounts so deposited in the Reserve Account shall be available for the purposes specified in Section 7.4(a).

7. To pay to POLA and POLB the Benefit Amount. As used herein, the term "**Benefit Amount**" means an amount equal to 40% of the difference between the present value of the amount that will be paid using tax exempt financing for a portion of the financing for the Project and the amount that would have been paid had taxable financing been used for such portion of the financing for the Project. It is currently estimated that, if possible, approximately \$400 million of such financing will be issued on a tax-exempt basis. The Benefit Amount shall be computed by ACTA on or about the date of issuance of such tax exempt financing and the discount rate shall be the tax exempt interest rate on such financing on that date ("**Tax Exempt Rate**"). The Benefit Amount shall bear interest, compounded semi-annually, at the Tax Exempt Rate from the date of issuance of the tax exempt financing, which interest shall be added to the balance of the Benefit Amount and likewise bear interest until paid. POLA and POLB shall allocate between themselves the Benefit Amount and shall notify ACTA in writing of such allocation prior to Substantial Completion.

If ACTA determines upon its final accounting after the end of a year that revenues from Use Fees and Container Charges remain at the end of such year after payment of the amounts due during such year with respect to items 1 through 4 of this Section 7.3(b) and provision for any payments due with respect to such items during the following year that are not anticipated to be covered by Use Fees and Container Charges during the following year, then the excess revenues from Use Fees and Container Charges from such year shall be applied first to pay all amounts then outstanding under item 5 above, and then to pay all amounts outstanding under item 6 above, and finally to pay all amounts outstanding under item 7 above. No payments shall be made with respect to items 5 through 7 until the final accounting has been made for such year. If it is determined upon completion of the final accounting for any calendar year that revenues from Use Fees, Container Charges and/or Shortfall Advances with respect to such year were in excess of the total amount needed to pay or fund all amounts and accounts in Sections 7.3(b)(1) through 7.3(b)(7) due with respect to a calendar year, then to the extent possible under the contracts governing the ACTA Financing and the Federal Loan, such excess revenues shall be used by ACTA to prepay the principal amount of the ACTA Financing and/or the Federal Loan (provided

that ACTA may elect not to prepay if it would be required to pay prepayment penalties or premiums), or if that is not possible, held for application against future installments of the ACTA Financing and the Federal Loan.

Notwithstanding the priority for allocating revenues set forth above, if due to the requirements of any lender (including, without limitation, the U.S. Department of Transportation), rating agency or bond insurer any of the items listed in paragraphs (1) through (7) of Section 7.3(b), or any portion or tranche of indebtedness covered in one of such paragraphs, must be subordinated to any of the other items set forth above, or such subordination is necessary or beneficial for rating purposes, then ACTA shall have the right to modify accordingly the priority for allocating revenues but any such modifications must be consistent with the requirements of the Federal Loan (including the flow of funds therein), unless the U.S. Department of Transportation agrees otherwise. In addition, if any lender, rating agency or bond insurer requires that funds not be applied to the items listed in paragraphs (5) through (7) of Section 7.3(b) and instead be held by the trustee under the Master Trust Indenture until certain debt service coverage tests or other conditions are satisfied, ACTA shall have the right to implement such requirement and conditions.

(c) The Railroads shall continue to be assessed the Use Fees and Container Charges at their full rates (*i.e.*, unadjusted for changes in annual debt service) until the earlier to occur of the following ("**Use Fees Termination Date**"): (i) thirty-five (35) years after the date of commencement of Through Train operations over the Rail Corridor north of West Thenard and south of 25th Street after Substantial Completion, and (ii) the date that Net Project Costs and the amounts and obligations listed in Section 7.3(b) have been repaid in full (including repayment in full of any ACTA Financing and the Federal Loans and the funding of the Reserve Account to the then current Reserve Account Target). Use Fees and Container Charges shall not be assessed and collected for any freight traffic movements after the Use Fees Termination Date. POLA, POLB and ACTA acknowledge that the Railroads shall not have any obligation to pay any portion of the Port Advances, the Property Assembly Reimbursement or the Benefit Amount that is not paid from Use Fees and Container Charges assessed for periods prior to the Use Fees Termination Date.

(d) Owner, ACTA and the Railroads agree that the ACTA Financing and the Federal Loan will be structured so that the rights of each Railroad under this Agreement to continue to operate on the Rail Corridor shall not be impaired by the exercise of any rights and remedies by the bondholders under the instruments evidencing the ACTA Financing or by the lender under the Federal Loan so long as such Railroad continues to pay Use Fees, Container Charges, M&O Charges and other amounts owing from such Railroad under this Agreement.

(e) The schedule of Use Fees is as follows:

**Schedule of Use Fees**

- |   |                           |   |
|---|---------------------------|---|
| • | Waterborne Containers     | \$15.00 per TEU (Loaded)<br>\$ 4.00 per TEU (Empty) |
| • | Non-Waterborne Containers | \$ 4.00 per TEU (Loaded or Empty)                   |

- Automobiles \$ 8.00 per Railcar
- Coal \$ 8.00 per Railcar
- White Bulk \$ 8.00 per Railcar
- Iron & Steel \$ 8.00 per Railcar
- Liquid Bulk \$ 8.00 per Railcar
- Misc. Carload \$ 8.00 per Railcar

1. As used above, “**Waterborne Containers**” shall mean containers which are loaded onto or discharged from a vessel or barge at the Ports, and “**Non-Waterborne Containers**” shall mean all containers which are not Waterborne Containers.

2. There will be no charge for empty Railcars. In addition, a container or railcar transported on the Rail Corridor to a rail staging or assembly area (and not loaded or unloaded) and then moved on the Rail Corridor again in the same direction (*i.e.*, north or south on the Rail Corridor) to a location off of the Rail Corridor shall be charged only one Use Fee for that one-way trip.

3. Except as set forth in Paragraph 2 of this Section 7.3(e), the Use Fees will be assessed on all traffic as set forth in Section 7.3(f), other than Repositioning and Crossing Movements and switching of rail cars at the Permitted Switching Locations, which will be exempt from Use Fees (provided that if a train moving railcars to or from a Permitted Switching Location uses the trench portion of the Rail Corridor, such train movement will not be exempt from the Use Fees).

4. Use Fees shall be increased effective on January 1 of each year, commencing January 1, 2003 and on January 1 of every year thereafter, based on changes in the CPI since January 1 of the immediately prior year (*i.e.*, the first increase shall go into effect on January 1, 2003), provided, however, in no event shall such increase be less than 1.5% or greater than 3% in any given calendar year, and no reduction shall be made if the CPI decreases.

5. UP’s Dolores Hauler and UP’s presently existing unit oil train to Tosco are required to use the Rail Corridor due to conditions in the Project’s environmental impact report even though such trains are likely to constitute “Local Trains” and thus not required by the terms of this Agreement to use the Rail Corridor. To the extent that such trains meet the definition of a “Local Train,” such trains shall not be charged Use Fees even though they travel on the Rail Corridor, but such trains shall be included in determining the operating Railroad’s share of M&O Charges under Section 7.2. If the Project’s environmental impact report is supplemented or amended to no longer specify that such trains use the Rail Corridor, then (i) such trains shall no longer be required to use the Rail Corridor (unless they constitute Through Trains), and (ii) the partial



exemption from Use Fees provided such trains by this Paragraph (5) of Section 7.3(e) shall be automatically repealed.

(f) Each Railroad shall pay to ACTA, in the manner specified in Section 7.6, the Use Fees set forth on the schedule in Section 7.3(e), which Use Fees shall be charged on (i) all Through Trains, regardless of whether the Through Train uses the Rail Corridor (unless such Through Train cannot use the Rail Corridor because of a complete blockage of all through tracks comprising the Rail Corridor for more than five consecutive days), (ii) all Local Trains which actually use all or any portion of the Rail Corridor, and (iii) all rail cars and/or containers, as the case may be, which originate or terminate at a Port Facility but which are included on a Local Train which does not use the Rail Corridor (other than rail cars carrying Toyota (or related company) automobiles originating in the continental United States and terminating at the Toyota Distribution Facility during the exclusive service period described in Section 5.2(b)(iii)).

(g) Commencing on the date of commencement of Through Train operations over the Rail Corridor north of West Thenard and south of 25th Street after Substantial Completion, each Railroad also shall pay to ACTA, in the manner specified in Section 7.6, a charge of \$15.00 per loaded TEU ("**Container Charges**") on each Waterborne Container that originates or terminates at the Ports and which is moved by rail into or out of Southern California (*i.e.*, the counties of Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial) by such Railroad, unless such Waterborne Container already has been assessed the Use Fee pursuant to the provisions of Section 7.3, which payment shall be made to ACTA regardless of whether the containers have traveled on the Rail Corridor. Container Charges shall be increased effective on January 1 of each year, commencing January 1, 2003 and on January 1 of every year thereafter, based on changes in the CPI since January 1 of the immediately prior year (*i.e.*, the first increase shall go into effect on January 1, 2003), provided, however, in no event shall such increase be less than 1.5% or greater than 3% in any given calendar year, and no reduction shall be made if the CPI decreases. Notwithstanding the first sentence of this Section 7.3(g), if there is a complete blockage of all through tracks comprising the Rail Corridor for more than five consecutive days, then Container Charges shall not be assessed on those Waterborne Containers that are shifted to transport by truck to or from the Ports as a result of the complete blockage. For purposes of determining the number of Waterborne Containers that have been shifted to transport by truck as a result of a complete blockage, it shall be assumed that all Waterborne Containers transported by truck during the period of complete blockage (commencing after the fifth day of such complete blockage) in excess of the number of Waterborne Containers transported during the same calendar period for the immediately prior year were shifted to truck transport as a result of the complete blockage, and no Container Charges shall be assessed against such excess (but Container Charges shall continue to apply to Waterborne Containers that are within the levels of the prior year whether or not such Waterborne Containers were shifted to truck transport as a result of a complete blockage of the Rail Corridor). There shall be no adjustment in Container Charges for a partial blockage of the Rail Corridor.

(h) The following provisions shall apply to Shortfall Advances:

(i) If during any calendar year after Substantial Completion (or the partial calendar year in which Substantial Completion occurs) the Annual Amount

payments due during such calendar year (or the initial partial year) and the Federal Loan payments due during such calendar year (or the initial partial year) (collectively, the “**Required Annual Payment**”) are not paid in full, then POLA and POLB will advance to ACTA, from any legally available source, funds (“**Shortfall Advances**”) sufficient to pay the positive difference between the Required Annual Payment due with respect to such year and the amount of other funds available to be applied against the Required Annual Amount in such year (exclusive of all reserves and other funds specifically pledged for other purposes), provided, however, that in no event shall the Shortfall Advances required to be made pursuant to this Section 7.3(h) with respect to a calendar year (or the initial partial calendar year) exceed in the aggregate an amount equal to 40% of the total Annual Amount and Federal Loan payments due in such calendar year (or the initial partial calendar year). Payment of the Shortfall Advances shall be made as provided in Section 7.3(h)(iii) below. Each of POLA and POLB shall be separately responsible for one-half of the Shortfall Advances due in a year, with neither entity responsible for the contribution required of the other (and in no event shall POLA or POLB individually be required to pay in any calendar year (or partial year) an amount in excess of 20% of the Required Annual Amount due in such calendar year or the initial partial year). ACTA and POLB acknowledge that POLA has and expects from time to time to enter into agreements relating to its bonded indebtedness or other revenue obligations, which existing agreements presently require payment of operation and maintenance costs prior to debt service on such POLA obligations. Nothing in this Operating Agreement shall prevent POLA from changing the priority of payment with respect to its existing or any future bonded indebtedness or other revenue obligations. It is understood that the only purpose and effect of the preceding two sentences is to assure that the payment of Shortfall Advances made by POLA hereunder is not required by this Operating Agreement to be given more or less favorable priority than such payments made by POLB hereunder. The Shortfall Advances shall be allocated to fund shortfalls for such year in the following items and in the following order of priority: first, to the Annual Amount (other than any portion or tranche subordinated to the Federal Loan), second to the Federal Loan, and third, to any subordinated portion or tranche of the ACTA Financing.

(ii) No later than 12 months prior to the Estimated Completion Date, ACTA shall prepare and deliver to POLA and POLB (with a copy to the Railroads) an estimate of Shortfall Advances and/or Section 7.4(g) payments that may be due during the partial calendar year occurring after Substantial Completion and the first full calendar year immediately following such partial year. At least 90 days prior to the beginning of each POLA fiscal year which commences after Substantial Completion, ACTA shall submit to POLA (with a copy to the Railroads) its then current projection of the amount of Shortfall Advances and/or Section 7.4(g) payments that ACTA estimates may be required from POLA during POLA’s upcoming fiscal year. At least 90 days prior to the beginning of each POLB fiscal year which commences after Substantial Completion, ACTA shall submit to POLB (with a copy to the Railroads) its then current projection of the amount of Shortfall Advances and/or Section 7.4(g) payments that ACTA

estimates may be required from POLB during POLB's upcoming fiscal year. ACTA shall include in any such notice reasonable background detail regarding the basis for its estimate. Upon receipt of any such notice by POLA and POLB, each entity shall (A) include its share of the amount of the estimated Shortfall Advance and/or Section 7.4(g) payments in its budget for the fiscal year during which such Shortfall Advance and/or Section 7.4(g) payments may occur; and/or (B) set aside existing surplus revenues or other lawfully available funds for the payment of its share of such Shortfall Advance and/or Section 7.4(g) payments. Promptly following such action, POLA and POLB shall each provide ACTA with a certificate stating that the amount of the estimated Shortfall Advance and/or Section 7.4(g) payments have been included in its budget for the fiscal year, and/or that surplus revenues or other lawfully available funds have been set aside to make such payments, as applicable. In addition, ACTA shall prepare and deliver to POLA and POLB, on the first day of each quarter during their respective fiscal years, a quarterly report setting forth ACTA's then current projection of the amount of the estimated Shortfall Advance and/or Section 7.4(g) payments that ACTA estimates will be required from such entity during the then current fiscal year. If at any time ACTA determines that the estimated amount of the Shortfall Advance and/or Section 7.4(g) payments are greater than the estimates previously provided by ACTA and budgeted or set aside by POLA and POLB pursuant to this Section, then ACTA shall immediately notify POLA and POLA and each such entity shall promptly appropriate funds to its current budget to provide for such estimated increase in the amount of the Shortfall Advance and/or Section 7.4(g) payments and/or set aside additional surplus revenues or other lawfully available funds to cover such increase. POLA and POLB shall thereafter provide to ACTA written notice certifying that such entity has complied with the foregoing requirement.

(iii) Each of POLA and POLB acknowledges that the notices provided by ACTA pursuant to this Section are estimates of the amount of Shortfall Advances and/or Section 7.4(g) payments that may be required during the current and upcoming fiscal year of each entity and are provided only to assist POLA and POLB in their respective budget planning. POLA and POLB shall pay the actual amount of Shortfall Advances and/or Section 7.4(g) payments required to be paid under the terms of this Agreement notwithstanding the fact that such amounts may vary from the estimates provided by ACTA under this Section. At least 45 days before the date on which a Shortfall Advance is needed, ACTA shall deliver a written notice to POLA and POLB (with a copy to the Railroads) specifying the actual amount of the Shortfall Advance needed on such date and requesting payment thereof. POLA and POLB shall each pay its respective share of such amount on or prior to the date specified in such notice.

(iv) In the event POLA or POLB fails to pay a Shortfall Advance in the year such payment is due, then the amount of such unpaid Shortfall Advance (the "**Unpaid Shortfall**") shall continue to accrue and be payable by POLA or POLB (as the case may be) on the first day of the following fiscal year. The obligation of POLA or POLB (as the case may be) to pay the Unpaid Shortfall shall be in

addition to its obligation to pay Shortfall Advances. In the event such Unpaid Shortfall triggers a reamortization of the Federal Loan and causes an increase in the amount due on the Federal Loan for the following year, such increase shall be allocated entirely to the entity which has not paid for purposes of determining POLA's and POLB's respective Shortfall Advance, if any, for such following year. In the event such increase is included in the entity's Shortfall Advance for such subsequent year, then the amount of such entity's Unpaid Shortfall for the prior year shall be reduced by the amount of such increase.

(v) Within 120 days after the end of each calendar year ACTA shall deliver a final statement to POLA and POLB (with a copy to the Railroads) of the actual amount of any Shortfall Advances that were required for the prior calendar year. If such final statement shows that POLA and/or POLB contributed more than its respective share of the amount of Shortfall Advances actually required with respect to the prior calendar year, ACTA shall promptly refund the excess contributions to POLA and/or POLB, as the case may be. If such final statement shows that POLA and/or POLB contributed less than the amount of Shortfall Advances actually required with respect to the prior calendar year, POLA and/or POLB, as the case may be, shall promptly deliver to ACTA its respective share of the shortfall in required contributions. Nothing in this Section 7.3(h) shall be construed as a commitment or covenant by POLA or POLB to contribute to or pay for any shortfalls in funding of the matters described herein beyond the amount of the contribution specified in this Section 7.3(h) or in Section 7.4(g).

(vi) If any portion or tranche of the ACTA Financing is subordinated as provided in the last grammatical paragraph of Section 7.3(b), then for the purposes of this Section 7.3(h) only, the Annual Amount shall be deemed to include such subordinated portion or tranche and Shortfall Advances shall be applied thereto in the order of priority set forth in Section 7.3(h)(i).

(vii) ACTA, POLA and POLB further agree that, to the extent there remains any balance outstanding on the Federal Loan following the Use Fees Termination Date, such balance shall be considered an amount due under Section 7.3(h)(i), and the Shortfall Advances may, at the discretion of the U.S. Department of Transportation, be continued and increased to 100% of the amount required to amortize the Federal Loan balance outstanding, which shall be paid by ACTA as provided in this Section 7.3(h)(vii). Such balance shall be paid by ACTA with continued Shortfall Advances over a 10-year period following the Use Fees Termination Date and such balance shall bear interest at the then existing rate of interest which the Federal Loan bears. Such amortization shall be made on a basis of substantially equal installments of principal and interest. Notwithstanding the foregoing, in the event that the continued payment of Shortfall Advances required pursuant to this Section 7.3(h)(vii) shall cause POLA or POLB (either together or individually) to suffer significant financial hardship or otherwise significantly interfere with or compromise the operations of the Ports, as demonstrated to the satisfaction of the U.S. Department of Transportation, then such Shortfall Advances may be reduced and ACTA shall



agree to renegotiate the terms of the Federal Loan. Each of POLA and POLB shall be separately responsible for one-half of any continued Shortfall Advances due under this Section 7.3(h)(vii), and the provisions of Section 7.3(h)(iv) shall apply to Shortfall Advances made under this Section 7.3(h)(vii). The provisions of Section 7.3(b)(vi) shall not apply to this Section 7.3(h)(vii). ACTA, POLA and POLB acknowledge that nothing in this Section 7.3(h)(vii) shall prevent the U.S. Department of Transportation from pursuing any legal remedies otherwise or generally available to it with respect to amounts due on the Federal Loan.

(viii) The obligation of POLA and POLB to make Shortfall Advances shall continue even though Use Fees may be abated under Section 7.3(g) as the result of a complete blockage of all through tracks comprising the Rail Corridor for more than 5 consecutive days. The proceeds of any business interruption insurance with respect to such an abatement of Use Fees (and, if applicable, Container Charges) that are applied to the Required Annual Amount shall be taken into account in determining the amount of Shortfall Advances due under this Section 7.3(h).

(i) ACTA, POLA, POLB and each of the Railroads agree to reasonably cooperate with each other and to use their respective reasonable efforts to obtain funding and financing or refinancing for the Project on terms and conditions as favorable for implementation of the Project as is possible under then-existing circumstances and conditions (including, with respect to any financing or refinancing, cooperation to obtain the maximum amount of such financing or refinancing on a tax-exempt basis, if available, and to provide financial and operating data for disclosure purposes to the extent such information is available and necessary to comply with federal securities laws).

(j) Nothing in this Section 7.3 shall be deemed or construed (i) to require or prevent Owner from using investment grade or non-investment grade funding or financing or refinancing (or a mix thereof) to pay all or part of Net Project Costs, (ii) as a commitment or covenant by the Railroads to provide any credit support or volume guarantees in connection with any financing or refinancing for the Project or, (iii) to require the Railroads to pay any portion of the Annual Amount, other than through Use Fees and Container Charges.

(k) Notwithstanding anything in this Agreement to the contrary, in lieu of funding all or any portion of the Required Debt Service Reserve, Owner and/or ACTA may deliver, or cause to be delivered, a surety bond or an insurance policy securing an amount, together with moneys or other investments or instruments on deposit in the debt service reserve fund (if any), equal to the Required Debt Service Reserve. Such surety bond or insurance policy shall be issued by an insurance company whose unsecured debt obligations (or for which obligations secured by such insurance company's insurance policies) are rated in the highest rating category of Moody's Investors Service and Standard & Poor's Ratings Services or any other nationally recognized rating agency. In addition to the foregoing, in lieu of funding all or any portion of the Required Debt Service Reserve, Owner and/or ACTA may deliver, or cause to be delivered, an irrevocable letter of credit issued by a financial institution having unsecured debt obligations rated in one of the three highest rating categories of Moody's Investors Service and Standard & Poor's Ratings Services or any other nationally recognized rating agency, in an amount, together



with moneys or other investments or instruments on deposit in the debt service reserve fund, equal to the Required Debt Service Reserve. If a replacement surety bond, insurance policy and/or letter of credit will not be deposited prior to the expiration of a current surety bond, insurance policy and/or letter of credit, Owner and/or ACTA immediately shall cause to be deposited in the Required Debt Service Reserve moneys (funded from Use Fees, Container Charges and Shortfall Advances) sufficient to cause the amount on deposit to equal the Required Debt Service Reserve. Notwithstanding the foregoing, any replacement surety bond, insurance policy and/or letter of credit must meet any applicable requirements of the Master Trust Indenture.

(I) As used in this Agreement, the term “**Net Project Costs**” means all costs incurred by or on behalf of Owner and/or ACTA in connection with the Project, including: (1) all costs of designing, bidding and constructing the Project and related improvements, including utility relocations, acquisition of property necessary for the Project from parties other than the Railroads, and amounts paid by Owner or ACTA to one of the Railroads to perform certain construction work pursuant to a force account or other reimbursement arrangement, but excluding the cost of any improvements shown on the Track Schematic Drawing attached to the UP C&M Agreement and the BNSF C&M Agreement as being funded by either of the Railroads or by third parties, (2) costs necessary to provide, or incurred in connection with obtaining, financing or refinancing or grants for the Project, including the Federal Loan, the ACTA Financing and the amounts described in Section 7.3(b)(1), and costs incurred in connection with seeking tax-exempt financing for the Project, including obtaining and monitoring compliance with rulings or advice letters from the Internal Revenue Service, (3) expenses of an independent consultant (or consultants) retained jointly by UP and BNSF to review and comment on updates and modifications to the Conceptual Design Layout and the Track Schematic Drawing described in the definition of “Project” and Project construction plans (however, this clause shall not be deemed to supercede the scope of work or compensation provisions related to such consultant in the BNSF C&M Agreement or in the actual contract with such consultant), (4) costs of Railroad employees (including flagmen) requested by Owner or ACTA, or required by law, to perform work in connection with the Project, (5) costs to obtain any necessary permits or approvals related to the Project or any component thereof, or any financing with respect thereto, including federal and state environmental impact statements, reports and studies, settlement agreements with governmental jurisdictions along the Rail Corridor, hazardous substances or materials investigations and reports, and any attorneys’ fees and litigation costs related to either obtaining or defending the same, (6) attorneys’ fees and litigation costs of establishing or defending the rights of the Owner and/or ACTA to construct the Project, and (7) the reasonable administrative expenses of Owner and ACTA in connection with the development of the Project, less the total amount of all federal, state or local grants for the Project including the \$135 million already allocated to the Project (however, as used in this Agreement, “grants” shall not include the Federal Loan or any other loans or guaranties by federal, state or local governments). It is the intent of the parties hereto that Net Project Costs shall be paid as they are incurred from the proceeds of the ACTA Financing, the Federal Loan, Port Advances, the Property Assembly Reimbursement and other funds available to ACTA, and that, as and to the extent provided in Section 7.3(b), revenues from Use Fees and Container Charges (and, if applicable, Shortfall Advances) will be used to pay and fund the ACTA Financing, the Federal Loan, Port Advances, the Property Assembly Reimbursement and the other items listed in Section 7.3(b). It is also anticipated that Port Advances made prior to Substantial Completion will be reimbursed to

Owner, to the maximum extent possible, from the proceeds of the ACTA Financing, the Federal Loan and grants or other funds available to ACTA.

(m) ACTA and the Railroads acknowledge and agree that all payments required to be made by POLA and POLB pursuant to this Agreement shall be payable from funds in POLA's and POLB's respective "Harbor Revenue Fund" and not from any other fund or account of POLA, the City of Los Angeles, POLB or the City of Long Beach.

#### **7.4 Reserve Account.**

(a) Prior to Substantial Completion, ACTA shall establish a separate revolving fund/account in ACTA's name with an independent financial services firm or institution, which can be any trustee for Bonds issued by ACTA ("**Reserve Account**"). ACTA shall have the right to assign and transfer the Reserve Account to any such trustee. The Reserve Account shall be used by ACTA to pay when due (i) annual maintenance and capital improvements and replacements of the Non-Rail Components, together with capital replacement of any rail bridge over the Rail Corridor (but only if (A) one of the Railroads actually is using the rail bridge at the time the capital replacement is needed, and (B) a third party, at its cost, is not providing the maintenance and/or capital improvement or replacement of such rail bridge) (collectively, "**Non-Rail Maintenance and Capital Improvement Charges**"), (ii) Capital Expenses, (iii) costs or fees charged by the financial institution or firm at which the Reserve Account is established for maintaining the Reserve Account and investing any funds therein, and (iv) if approved by the Operating Committee (or if both Railroads are in default under this Agreement, then ACTA) to pay M&O Charges if and only to the extent such charges have not been paid by the Railroads and sufficient funds are not otherwise available therefore. Notwithstanding the foregoing, the parties hereby agree that after Substantial Completion, if any betterment, capital improvement and/or upgrade to the Track and/or Track Support Structures, including those located on Port-Owned Tracks, will benefit fewer than all of the Railroads (e.g., an improvement to the Rail Corridor that is used by only one Railroad), then only the Railroad(s) so benefited shall pay the costs of such betterment, capital improvement and/or upgrades (provided that if the other Railroad thereafter elects to use the subject betterment, capital improvement and/or upgrade, that Railroad shall reimburse the first Railroad for one-half of the cost of such betterment, capital improvement and/or upgrade, with interest thereon at the then-current market rate), and the same shall not be funded from the Reserve Account unless approved by a unanimous vote of the Operating Committee.

(b) Subject to Section 7.4(c), the Reserve Account shall be funded over time from the Use Fee and Container Charge revenues remaining each year after payment of the amounts described in Section 7.3 (b)(1) until the Reserve Account reaches (or is restored to) the then-current target amount for the Reserve Account ("**Reserve Account Target**"). The Reserve Account Target for the first five year period after Substantial Completion shall be \$15 million. The Reserve Account Target shall be adjusted from time to time as provided in Section 7.4(e). Interest and investment income added to the Reserve Account pursuant to Section 7.4(d) and sums added pursuant to Section 7.3(b)(6) and Section 7.4(g) shall be included in determining whether the Reserve Account Target has been met. Once the Reserve Account Target has been met, Use Fee and Container Charge revenues shall be added to the Reserve Account only to the extent necessary to restore the balance therein to the then-current Reserve Account Target.

(c) Notwithstanding any other provision of this Section 7.4, until all amounts (including interest, if any) outstanding with respect to the Federal Loan, the ACTA Financing, Port Advances, the Property Assembly Reimbursement and the Benefit Amount have been paid in full (i), no more than \$10 million of Use Fees and Container Charges generated each year may be deposited in the Reserve Account and (ii) the Reserve Account Target shall not exceed \$90 million (except that these two restrictions shall not apply to deposits in the Reserve Account pursuant to Section 7.3(b)(6), or to income or interest earned on the Reserve Account). Furthermore, to the extent any amounts are withdrawn from the Reserve Account to pay M&O Charges, such amounts shall be replenished solely from payments made by the Railroads in accordance with Section 7.5(f) and not from Use Fee and Container Charge revenues.

(d) Amounts placed in the Reserve Account shall be invested in accounts or investments selected by ACTA in accordance with ACTA's Investment Policy, as amended from time to time in accordance with the requirements of California law applicable to ACTA. Any income or interest earned on amounts in the Reserve Account shall be added to the Reserve Account (even if the addition of such amounts would result in the amount in the Reserve Account to exceed the then-current Reserve Account Target) and shall be available for application to the purposes specified herein for the Reserve Account.

(e) Every five years following Substantial Completion, the Operating Committee shall adjust the Reserve Account Target for the upcoming five-year period so that it will be equal to one-fifth of all costs potentially covered by the Reserve Account (including M&O Charges) that are projected to be incurred during the upcoming five year period, taking into account all relevant factors, including (i) projected increases in such costs for the upcoming five year period, (ii) the anticipated inflation rate over the upcoming five year period, and (iii) any extraordinary maintenance, betterments or capital improvements or replacements that are anticipated to be made over the upcoming five year period. Any adjustment to the Reserve Account Target shall take effect on January 1 of the first year of each such 5-year period. If the Operating Committee elects to increase the then-current Reserve Account Target, revenues from Use Fees and Container Charges shall be deposited in the Reserve Account pursuant to Section 7.3(b) until the new Reserve Account Target is met. If the Operating Committee elects to reduce the then-current Reserve Account Target, the Reserve Account shall be reduced by spending funds therein without making any new deposits from Use Fees or Container Charges until the new Reserve Account Target is met. Notwithstanding anything to the contrary in this Section 7.4(e), in no event shall the Reserve Account Target be reduced below \$15 million. If the Operating Committee cannot reach agreement on the adjustment, if any, to be made to the Reserve Account Target, then any member of the Operating Committee may cause the matter to be decided by arbitration pursuant to Section 14.4.

(f) It is the intent of the parties hereto that the Reserve Account shall be maintained in place for the life of the Rail Corridor. After the Use Fees Termination Date the Reserve Account shall be funded from contributions by the Railroads. No later than November 30 of each calendar year following the Use Fees Termination Date, the Operating Committee shall determine the amount, if any, estimated to be necessary to bring the balance in the Reserve Account to the then-current Reserve Account Target as of January 1 of the following year. No later than March 1 of such year each Railroad shall deposit into the Reserve Account its Pro Rata

Portion (determined on a gross ton mile basis based on usage of the Rail Corridor over the prior year) of such amount.

(g) The following special funding provisions shall apply to the Reserve Account:

(i) If less than \$4 million in revenues from Use Fees and Container Charges are deposited in the Reserve Account with respect to each of the first four years after Substantial Completion, then POLA and POLB shall collectively deposit in the Reserve Account, no later than 90 days after ACTA's final accounting for each of such first four years, the difference between \$4 million and the amount of Use Fee and Container Charge revenues actually deposited in the Reserve Account with respect to such year. Notwithstanding the foregoing, the obligation of POLB and POLA under the first sentence of this Section 7.4(g)(i) shall end when a total of \$15 million has been contributed to the Reserve Account from Use Fees, Container Charges and contributions by POLA and POLB under this Section 7.4(g)(i).

(ii) If during the first five years after Substantial Completion funds are withdrawn from the Reserve Account pursuant to Section 8.6 to fund the Additional Capital Improvements, and thereafter less than \$4 million in revenues from Use Fees and Container Charges are deposited in the Reserve Account with respect to each of the following four calendar years after the funds are withdrawn (excluding the year in which such funds are withdrawn), then POLA and POLB shall collectively deposit into the Reserve Account, no later than 90 days after ACTA's final accounting for each of such four years, the difference between \$4 million and the amount of Use Fees and Container Charges actually deposited in the Reserve Account with respect to such year. Notwithstanding the foregoing, the obligation of POLB and POLA under the first sentence of this Section 7.4(g)(ii) shall end when the balance in the Reserve Account is restored to \$15 million.

(iii) Each of POLA and POLB shall be separately responsible for one-half of any contribution required by paragraphs (i) or (ii) of this Section 7.4(g), with neither entity responsible for the contribution of the other. Any contributions by POLA or POLB pursuant to this Section 7.4(g) shall constitute Port Advances and shall be reimbursed to the entity that contributed the same, with interest, as provided in Section 7.3(b).

(iv) Payments made by POLA and POLB under this Section 7.4(g) shall not be considered to be a part of, or count against, any Shortfall Advances by Owner for purposes of Section 7.3(h).

(h) The determination of whether the Reserve Account Target has been met for a year (and if not, what amount shall be deposited in such account during the year) shall be made as of the first day of such year by subtracting from the then current balance in the Reserve Account the budgeted expenses to be paid from the Reserve Account during such year, and then adding to the remainder the estimated interest and/or investment income that will be earned on

such remainder during that year (the number resulting from this calculation is referred to herein as the "**Estimated Reserve Balance**"). Subject to the limitation set forth in Section 7.4(c), the amount to be deposited in the Reserve Account during such year shall be the positive amount, if any, remaining after subtracting the Estimated Reserve Balance from the then-current Reserve Account Target.

#### **7.5 Payment of M&O Charges and Capital Expenses.**

(a) The budgeted M&O Charges (as provided in Section 8.3) for each calendar year other than the calendar year in which Substantial Completion occurs shall be divided into 12 equal installments, and the budgeted M&O Charges for the calendar year in which Substantial Completion occurs shall be divided by the respective number of full or partial calendar months in such calendar year (each such monthly amount being referred to herein as the "**Monthly Amount**"). If the Operating Committee modifies the budgeted M&O Charges during a year, the Monthly Amount shall be adjusted to reflect the revised budget, with any increase or decrease in the budget spread over the remainder of the year. Notwithstanding the foregoing, if an item or items to be funded through M&O Charges is scheduled to be performed before sufficient funds have accumulated through payment of the Monthly Amount, then the Operating Committee may require an accelerated payment of M&O Charges to fund such item(s).

(b) For the first two months of the calendar year in which Substantial Completion occurs, UP shall pay 2/3, and BNSF shall pay 1/3, of the Monthly Amount. For the third month of the calendar year in which Substantial Completion occurs, and each month thereafter of such calendar year, each Railroad's respective share of the Monthly Amount for such month shall be an amount equal to (i) the applicable Monthly Amount, multiplied by (ii) such Railroad's Pro Rata Portion during the already completed months of the such calendar year.

(c) For the first two months of each calendar year after the calendar year in which Substantial Completion occurs, each Railroad shall pay an amount equal to (i) the applicable Monthly Amount, multiplied by (ii) such Railroad's Pro Rata Portion during the immediately preceding calendar year. For all subsequent months of the calendar year in question, each Railroad's respective share of the Monthly Amount for such month shall be determined based upon such Railroad's Pro Rata Portion during the already completed months of that calendar year.

(d) The budgeted Capital Expenses (as provided in Section 8.3) shall be paid from the Reserve Account, to the extent funds then are available in the Reserve Account. If and to the extent funds are not then available in the Reserve Account to pay any budgeted Capital Expenses, or any other Capital Expenses that the Operating Committee may from time to time determine to be necessary or appropriate (including to pay for any capital repairs or replacements that may be required as a result of a casualty event), each Railroad shall pay its Pro Rata Portion on a gross ton mile basis (based on the Railroad's Pro Rata Portion for the previous calendar year) of such Capital Expenses (or, if such need occurs during the first year following Substantial Completion, the Pro Rata Portion shall be based on the Railroads' Pro Rata Portion during the already completed months of such year).

(e) The budgeted Non-Rail Maintenance and Capital Improvement Charges (as provided in Section 7.4) shall be paid from the Reserve Account, to the extent funds then are available in the Reserve Account. If and to the extent funds are not then available in the Reserve Account to pay any budgeted Non-Rail Maintenance and Capital Improvement Charges, or any other Non-Rail Maintenance and Capital Improvement Charges that the Operating Committee may from time to time determine to be necessary or appropriate (including to pay for any capital repairs or replacements that may be required as a result of a casualty event), each Railroad shall pay its Pro Rata Portion on a gross ton mile basis (based on the Railroad's Pro Rata Portion for the previous calendar year) of such Non-Rail Maintenance and Capital Improvement Charges (or, if such need occurs during the first year following Substantial Completion, the Pro Rata Portion shall be based on the Railroads' Pro Rata Portion during the already completed months of such year).

(f) Each Railroad shall pay to ACTA its share of the Monthly Amount on the last day of each month except that each Railroad will pay its Pro Rata Portion of the Monthly Amount due for the first month after Substantial Completion within 15 days after Substantial Completion. Any payment not made when due shall bear interest at the Overdue Rate until paid. In addition, ACTA shall have all other remedies for such non-payment set forth in Article XIV. Promptly after the end of each calendar year, ACTA shall reconcile the actual and budgeted amounts of the M&O Charges and Capital Expenses for such calendar year and shall provide a detailed copy thereof to all members of the Operating Committee. To the extent that a Railroad's total payments during such calendar year differ from its allocation of actual M&O Charges and Capital Expenses for the calendar year based upon its Pro Rata Portion for the year, such Railroad shall receive a credit for such difference during the next succeeding month(s), or shall pay to ACTA the shortfall within 30 days after receipt of an invoice therefor, as the case may be. On the last day of each month (commencing with the second full calendar month after rail operations commence on the Rail Corridor, each Railroad shall deliver to ACTA (with a copy to the members of the Operating Committee) a written statement setting forth the number of train miles and the number of gross ton miles such Railroad conducted over the Rail Corridor and Port-Owned Tracks for such reporting month or months, certified as true and correct by an officer of such Railroad.

(g) Owner and Railroads each agree to make such undertakings and provide such annual and other information as may be requested in connection with the ACTA Financing pursuant to Securities and Exchange Commission Rule 15c2-12. Owner and Railroads also shall supply such publicly available information, factual certifications and opinions of counsel, and confirmation of any rights conveyed hereunder, as may be reasonably required in connection with the ACTA Financing (the reasonable costs incurred by any Railroad or Owner in complying with the foregoing shall be reimbursed to such party as a Net Project Cost).

#### **7.6 Payment of Use Fees and Container Charges.**

(a) On or before the last day of each month (commencing with the second full month after Substantial Completion), each Railroad shall pay to ACTA its Use Fees and Container Charges for the preceding month (or months, in the case of the first payment), based upon the actual number of containers and railcars transported by or on behalf of such Railroad during the immediately preceding month (or months, in the case of the first payment) for which



the payment of a Use Fee or Container Charge would apply. Any payment not made when due shall bear interest at the Overdue Rate until paid. In addition, ACTA, shall have all other remedies for such non-payment set forth in Article XIV. On the date each such payment is due, each Railroad also shall deliver to ACTA (with a copy to the members of the Operating Committee) a written statement setting forth the actual number of containers and railcars subject to Use Fee and Container Charges during the prior month (or months, in the case of the first report), and the actual number of Waterborne Containers transported by such Railroad and not already assessed a Use Fee or Container Charge during the prior month; such statement shall include sufficient detail as may necessary to allow ACTA to verify the number of containers (including Waterborne Containers) and railcars subject to Use Fees and Container Charges).

(b) ACTA shall monitor, or hire a third party to monitor, the railcars and containers that are subject to Use Fees and Container Charges and the cost thereof shall be included in the costs covered by Section 7.3(b)(1). After the end of each calendar quarter ACTA shall reconcile the amount of Use Fees and Container Charges actually paid by each Railroad for such quarter and shall provide copies of such reconciliation to all members of the Operating Committee. To the extent the amount of a Railroad's payment for such quarter differs from the amount it actually should have paid for the quarter based upon the number of containers and railcars actually subject to such charges, such Railroad shall receive a credit for such difference during the next succeeding month(s), or shall pay the shortfall within 30 days after receiving a statement therefor, as the case may be.

(c) If requested by ACTA, payment of Use Fees and Container Charges shall be made by wire transfer of immediately available funds to the account specified by ACTA.

**7.7 Audit Rights.** Owner, ACTA and the Railroads each shall have the right, from time to time, at its respective expense, to audit the books and records of the other parties hereto that pertain to the matters described in this Article VII. All such audits shall be conducted during regular office hours and with reasonable prior notice.

## **ARTICLE VIII**

### **MAINTENANCE OF AND CAPITAL REPAIRS TO RAIL CORRIDOR**

#### **8.1 Corridor Maintenance Contractor.**

At least 120 days prior to the Estimated Completion Date, the Operating Committee shall select the person or entity ("**Corridor Maintenance Contractor**") responsible for the inspection, maintenance and repair of, and making capital replacements and improvements to, the Rail Corridor and all Port-Owned Tracks (including, without limitation, the Non-Rail Components). The parties acknowledge that more than one entity or agency may be selected by the Operating Committee to perform different aspects of the maintenance and repair of, and the capital replacements and improvements to, the Rail Corridor and/or the Port-Owned Tracks, and each such person or entity so selected shall be deemed to be a Corridor Maintenance Contractor for purposes of this Agreement. The Corridor Maintenance Contractor shall not be UP or BNSF unless unanimously approved by all members of the Operating Committee.

## **8.2 Maintenance Standard.**

(a) The Rail Corridor and Port-Owned Tracks shall be inspected, maintained and repaired, and capital repairs, replacements and improvements shall be made, by the Corridor Maintenance Contractor, which maintenance and capital repairs shall include the matters for which M&O Charges are assessed pursuant to Section 7.2 and for which the Reserve Account is established pursuant to Section 7.4, (i) in a safe and reliable condition consistent with industry practice, (ii) in a manner that does not impair the ability of all Railroads to have equal competitive access over the Rail Corridor, (iii) at a level of utility, maintenance and repair consistent with all applicable laws, including FRA regulations, and (iv) otherwise in a condition which will permit rail operations at the speeds and in the manner contemplated for the Rail Corridor and the Project pursuant to this Agreement. At least 120 days prior to the Estimated Completion Date, the Operating Committee shall agree upon and establish specific standards and procedures for the maintenance and repair of, and for making capital repairs, replacements and improvements to, the Rail Corridor and the Port-Owned Tracks, which standards shall be consistent with (but may be higher than) those set forth in the preceding sentence.

(b) All materials, replacements, substitute items and capital improvements installed or made by or on behalf of the Corridor Maintenance Contractor, ACTA, POLA and/or POLB on or to the Rail Corridor or any Port-Owned Tracks shall become part of the Rail Corridor or Port-Owned Tracks, as the case may be, and the property of Owner, unless Owner otherwise agrees in writing.

(c) The Corridor Maintenance Contractor may temporarily take out of service portions of the Rail Corridor and/or the Port-Owned Tracks, upon giving the Railroads and Owner at least five days prior notice of such work (except in the case of an emergency, in which case the Corridor Maintenance Contractor shall give the Railroads such notice as is reasonable under the circumstances). In no event shall the Railroads be entitled to any sums, damages, fees or other compensation relating to any loss of business or revenues resulting from any such track being taken out of service.

## **8.3 Annual Maintenance and Capital Improvement Plan and Budget.**

(a) No later than 120 days prior to the Estimated Completion Date, and no later than September 1st of each year following Substantial Completion, the Operating Committee shall prepare or cause to be prepared a plan and budget for inspection, maintenance, repairs and capital improvements and replacements to the Rail Corridor and the Port-Owned Tracks for the coming calendar year, which plan and budget shall be consistent with assuring each Railroad equal competitive access and otherwise shall be designed to achieve and implement the principles and goals of the Rail Corridor and the Project set forth in this Agreement. Such budget shall be prepared by the Corridor Maintenance Contractor or by another person or entity designated by the Operating Committee. Such plan and budget shall contain a separate subplan and subbudget for each of the following categories of maintenance, repairs and capital improvements: (1) M&O Charges; (2) Capital Expenses; and (3) Non-Rail Maintenance and Capital Improvement Charges. The Operating Committee shall approve or disapprove of such proposed plan and budget within 30 days after receipt thereof. If the Operating Committee disapproves the proposed plan and budget, the Operating Committee shall provide to the entity

preparing the budget detailed reasons for such disapproval, whereupon such entity, within 15 days after receipt of the Operating Committee's disapproval, shall deliver to the Operating Committee a revised proposed annual plan and budget which shall reflect the Operating Committee's comments to the original proposed plan and budget. This revised annual plan and budget shall be subject to the Operating Committee's review and approval in the manner set forth above. The Operating Committee's failure to approve any annual proposed plan and budget in the manner and within the time periods set forth above shall be deemed disapproval of such plan and budget. The Operating Committee may modify an approval budget from time to time to take into account changed circumstances or needs.

(b) If on or before December 1 of any given year, the Operating Committee has not approved a plan and budget for the coming calendar year, then any member of the Operating Committee may invoke the arbitration procedures specified in Section 14.4. If a proposed plan and budget for the coming calendar year has not been approved by the Operating Committee by January 1 of such year, then, to reduce any disruption to maintenance and operations on the Rail Corridor and the Port-Owned Tracks, the prior calendar year's plan and budget shall apply, and the Corridor Maintenance Contractor shall conduct its operations, and the Railroads shall pay the Monthly Amount, in accordance therewith, until a final plan and budget for the current calendar year is approved by the Operating Committee.

(c) The Railroads, ACTA and Owner acknowledge that the annual maintenance and capital improvement and replacement plan is intended to provide for a normalized maintenance and replacement schedule over a period of time that will maintain the Rail Corridor and Port-Owned Tracks and all components thereof in the condition required by this Agreement. The maintenance and capital improvements program set forth in the annual maintenance and capital improvement plan shall include the periodic replacement of ties, rail, ballast, switches and other components of the Rail Corridor and Port-Owned Tracks with materials of like quality.

**8.4 Maintenance of Facilities Owned or Operated by the Railroads.** Except as otherwise may be set forth in the Port Rail Agreements or any other written agreements between or among the Railroads and/or POLA and/or POLB, each Railroad shall be responsible, at its sole cost and expense, for the maintenance and operation of, and repairs to, (i) any facility exclusively used or operated by such Railroad pursuant to Section 5.2, (ii) any signals located on the Rail Corridor and determined by the Operating Committee to be for the exclusive benefit of one Railroad, and (iii) all Track, Track Support Structures and other facilities and property owned or exclusively used or operated by such Railroad beyond or outside the boundaries of the Rail Corridor (including any Track connecting any property, rail line or facility owned or exclusively owned or operated by such Railroad to the Rail Corridor, to the extent not on the Rail Corridor, including signals, turnouts and crossovers with respect to such Track and including, by way of example, the rail bridges for BNSF's Harbor Subdivision crossing and for UP's La Habra Branch crossing over the Rail Corridor, and the North End Grade Separation (except that any costs or expenses incurred to repair or replace such rail bridges as a result of a design defect (unless such design defect relates to a design change requested by a Railroad) or a construction defect in the original construction shall be the responsibility of Owner and/or ACTA)). Nothing in this Section 8.4, however, shall prevent any of the Railroads from entering into agreements with each other or with third parties

providing for the performance of, or the sharing or reimbursement of costs related to, the maintenance, operation and/or repair matters covered by this Section.

**8.5 Maintenance of Port-Owned Tracks.** If and to the extent that the Port Rail Agreements provide that the Port Rail Operator shall be responsible for the repair or maintenance of, or making capital improvements or replacements to, any Port-Owned Tracks, the Port Rail Agreements shall control with respect to those Port-Owned Tracks, and any provisions to the contrary contained in this Agreement with respect to the repair or maintenance of, or capital improvements or replacements to, such Port-Owned Tracks are deemed superseded by the Port Rail Agreements until such agreements are terminated or expire in accordance with their respective terms.

**8.6 Additional Capital Improvements.** Notwithstanding the foregoing provisions of this Article VIII, at any time after ACTA delivers the Notice of Estimated Completion, but prior to the date that is seven years after such notice, the Railroads may elect in their sole discretion to make (or engage another party to make on behalf of the Railroads) any capital improvements or betterments to the Rail Corridor itself (or on property adjacent to the Rail Corridor in connection with a project to eliminate the need for trains to occupy a Permitted Switching Location on the Rail Corridor) that the Railroads, in their sole discretion, deem necessary or appropriate in order to better conduct joint rail operations on the Rail Corridor (the “**Additional Capital Improvements**”), provided that (i) in no event may the cost of the Additional Capital Improvements exceed \$15 million in the aggregate, with the actual cost thereof to be paid in progress payments directly to the Railroad or other party performing the work from the Reserve Account pursuant to Section 7.4 (alternatively, if there are insufficient funds in the Reserve Account to fully fund the cost of the Additional Capital Improvements, then one or more of the Railroads may pay the cost of such work and then be reimbursed from the Reserve Account as funds become available), (ii) the provisions of this Section 8.6 are intended to apply only to decisions by the Railroads within the aforesaid seven year period that Additional Capital Improvements are necessary or appropriate to better conduct joint rail operations on the Rail Corridor such that, upon completion of such Additional Capital Improvements, the Railroads shall have no further right to make additional capital improvements or betterments pursuant to this Section 8.6 (even if such capital improvements or betterments are completed prior to the expiration of the aforesaid seven year period, or if less than \$15 million is expended during the seven year period to complete the Additional Capital Improvements), (iii) the Railroads shall be responsible at their own cost for obtaining any permits or approvals necessary for such project that are required from any governmental authority with jurisdiction over the Railroads, (iv) if the Railroads elect to make the Additional Capital Improvements prior to Substantial Completion, the Railroads shall use their best efforts to ensure that such construction does not delay the work of ACTA's contractors or increase ACTA's costs (and ACTA and the Ports shall cooperate with the Railroads in connection with the Railroads' construction of the Additional Capital Improvements) and (v) the contractors performing any such Additional Capital Improvements shall maintain the same insurance coverage required of ACTA and its contractors when performing work on the property of UP or BNSF (but naming ACTA, POLA and POLB as the insureds). ACTA shall have the right to audit the Railroads' records of the costs for the Additional Capital Improvements.

**ARTICLE IX**  
**STORAGE AND HOLDING OF TRAINS**

**9.1 Storage and Holding.**

(a) Except as otherwise provided in Section 2.2 or in Sections 9.1(b) and 9.1(c), no Railroad shall be permitted to (i) store or leave trains, rail cars or other equipment, or (ii) uncouple locomotives from cars (except in an operating emergency), on the mainline Tracks within the Rail Corridor. The lead track from the west end of Mead Yard extending south toward the Badger Avenue Bridge shall not be considered a mainline Track within the Rail Corridor.

(b) If designated holding sidings are constructed within the Rail Corridor, the right to hold or store trains, rail cars or equipment on such sidings will be assigned to the Railroads on an equitable, nondiscriminatory, hourly basis by the Corridor Dispatcher, which storage or holding shall be in compliance with all applicable laws, rules and regulations and such other reasonable, nondiscriminatory rules as the Operating Committee may establish and agree upon (including the payment of a nondiscriminatory fee in the case of any such storage requested by any Railroad). Until all financings covered by the Annual Amount have been paid in full, any such storage fees shall be applied by Owner to payment of the Annual Amount as part of Owner's contribution thereto; after repayment of all such financings, such storage fees shall be deposited by Owner in the Reserve Account established in Section 7.3(b)(2).

(c) In addition, the Railroads shall have the right to hold or store trains on the Manuel Sidings in accordance with the provisions of Section 9.1(b), provided that for so long as UP exclusively serves the Toyota Distribution Facility, UP shall have first priority to store or hold trains on the siding commonly known as "Manuel 3" and no storage fee shall be charged for such use of the "Manuel 3" siding, unless used to store a unit train not going to or from the Toyota Distribution Facility, in which case the storage fee shall apply.

(d) POLB agrees that one track in POLB's Pier B Yard will be made available on a non-exclusive basis for use by the Railroads as a storage track to support unit train operations in connection with the Rail Corridor. Such track will be allocated and dispatched by the Port Rail Operator in accordance with the Port Rail Agreements governing POLB's Pier B Yard.

**9.2 Unloading of Trains.** Except as otherwise provided in Section 2.2, no trains shall be loaded or unloaded on or within the Rail Corridor.

**ARTICLE X**  
**PASSENGER RAIL OPERATIONS**

**10.1 Passenger Rail Operations.** The parties acknowledge and agree that passenger rail operations on the portion of the Rail Corridor between Hobart Junction and Soto Street Junction shall be permitted to the extent set forth in existing agreements relating to such segment of the Rail Corridor, provided, however, if under such existing agreements passenger rail operations may be increased with Owner's consent, Owner agrees that it shall not consent

to such increased passenger rail operations on such segment. The parties agree that there shall be no other passenger or commuter rail operations on any portion of the Rail Corridor except at Redondo Junction pursuant to pre-existing agreements. If after Substantial Completion Owner or any Railroad receives from the entities providing or operating such passenger rail service any payments in contribution to or reimbursement of maintenance, repair, or operations costs with respect to this Rail Corridor segment, such payments shall be deposited in the maintenance fund established pursuant to Section 7.2(a) and used to pay costs and expenses covered by Section 7.2.

## **ARTICLE XI**

### **LIABILITY**

#### **11.1 Property Damage; Personal Injury.**

(a) Generally, and subject to the other provisions of this Section 11.1, if any property damage, personal injury or death arising from operations on the Rail Corridor or the Port-Owned Tracks is determined to have been caused by or to have arisen from the policies, procedures or decisions made or adopted by the Operating Committee (including the selection and retention of the Corridor Dispatcher, the Corridor Maintenance Contractor and/or any other third party contractor working under a contract approved by the Operating Committee), then, as among the parties to this Agreement, POLA, POLB, UP and BNSF each shall be responsible for 25% of any liability for such property damage, personal injury or death which is not covered by such contractor or its insurance pursuant to this Agreement. Owner, ACTA and the Railroads intend that the agreements with the Corridor Dispatcher, the Corridor Maintenance Contractor and any other third party contractor working under a contract approved by the Operating Committee shall require that such contractors assume the liability and responsibility for all property damage, personal injury and death which is caused by or arises from the acts or omissions of such contractors, and that such contractors shall be obligated to carry insurance in accordance with Section 11.2 insuring against such events, but such agreements shall in no way alter the allocation of liability among POLA, POLB, UP and BNSF set forth in this Section 11.1(a). The liability of POLA, POLB, UP and BNSF under this Section 11.1(a) shall be several, not joint. If any of POLA, POLB, UP or BNSF ever pays or incurs more than 25% of any liability under this Section 11.1(a), that party shall have the right to recover from the other three parties (through a claim for contribution, or otherwise), and the other three parties shall pay, their respective share of the amount of the liability that the paying party paid or incurred in excess of 25%, together with interest thereon at the Overdue Rate until such amount is paid in full. Notwithstanding the foregoing, if at any time either, or both, of the Railroads is acting as the Corridor Dispatcher or Corridor Maintenance Contractor, such Railroad(s) shall be solely responsible for its (or their) acts or omissions while acting in such capacity, and neither POLA, POLB, nor the other Railroad (if applicable), shall share any responsibility pursuant to this Section 11.1(a) for liability arising from such acts or omissions (*i.e.*, neither POLA, POLB nor, if applicable, the other Railroad, shall bear 25% of such liability by reason of the Operating Committee selecting such Railroad(s) to serve in such capacity). In no event shall ACTA have any liability for any matters described in this Section 11.1(a) (unless and until such time, if ever, as ACTA becomes a member of the Operating Committee as a result of an assignment pursuant to Section 15.1(b)).



**(b)** Owner shall be liable for any injury to or death of trespassers or non-contractor/non-Railroad third parties or damage to their property, provided that (i) if a Railroad's employee or invitee, or their equipment, is involved in such incident, such Railroad shall bear the liability for such injury, death or damage, and (ii) if the injury or damage results from the acts or omissions of the Corridor Dispatcher, Corridor Maintenance Contractor and/or any other third party contractor working under a contract approved by the Operating Committee, then POLA, POLB, UP and BNSF shall share the liability for such injury, death or damage in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a). In no event shall ACTA have any liability for any matters described in this Section 11.1(b) (unless and until such time, if ever, as ACTA becomes a member of the Operating Committee as a result of an assignment pursuant to Section 15.1(b)).

**(c)** The Railroads, Owner and ACTA intend that the agreements with the Corridor Dispatcher, the Corridor Maintenance Contractor and any other third party contractor working under a contract approved by the Operating Committee shall provide that (i) unless FELA is found to be applicable, injury to or death of such contractors' employees shall be covered by the worker's compensation and liability insurance of the respective contractors, and (ii) the respective contractors' insurance will cover damage to their equipment. However, to the extent that a contractor's insurance does not cover any such injury, death or damage or if FELA is found to apply, POLA, POLB, UP and BNSF shall share liability for such loss (in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a)). In no event shall ACTA have any liability for any matters described in this Section 11.1(c) (unless and until such time, if ever, as ACTA becomes a member of the Operating Committee as a result of an assignment pursuant to Section 15.1(b)).

**(d)** Except to the extent caused by the acts or omissions of the Corridor Dispatcher, the Corridor Maintenance Contractor and/or any other third party contractor working under a contract approved by the Operating Committee (in which case the provisions of Section 11.1(a) shall apply with respect to such contractor's share of the liability under this Section 11.1(d)):

(i) POLA, POLB and ACTA each shall be liable for injury to or death of its respective invitees, agents, contractors not working under a contract approved by the Operating Committee, representatives and direct employees (*i.e.*, not the Railroads, the Railroads' employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee, which, for purposes of this Section 11.1(d), shall not be deemed to be contractors of ACTA or Owner), and damage to its or their equipment, REGARDLESS OF ANY NEGLIGENCE OF ANY RAILROAD, except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of any Railroad or that Railroad's employees, invitees or contractors not working under a contract approved by the Operating Committee, in which case the Railroad involved shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct; and

(ii) each Railroad shall be liable for injury to or death of its respective invitees, agents, contractors not working under a contract approved by the Operating Committee, representatives and direct employees (*i.e.*, not POLA, POLB, ACTA, their respective employees, or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee), and damage to its or their equipment, REGARDLESS OF ANY NEGLIGENCE OF POLA, POLB OR ACTA, except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of POLA, POLB or ACTA, or their respective employees, invitees or contractors not working under a contract approved by the Operating Committee, in which case POLA, POLB or ACTA (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct.

For the purposes of this Section 11.1(d), "equipment" shall not include facilities or equipment constituting part of, or used in connection with rail operations on or maintenance of, the Rail Corridor or Port-Owned Tracks.

(e) In a train accident or derailment involving the train of only one Railroad, the Railroad involved shall be responsible for any injury to or death of its employees and damage to its equipment, as well as for injury to or death of third parties (as and to the extent set forth in Section 11.1(b)) and damage to property (including Rail Corridor structures), except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of the other Railroad, POLA, POLB or ACTA, or their respective invitees, contractors not working under a contract approved by the Operating Committee or direct employees (*i.e.*, not the Railroads, their employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee, which, for purposes of this Section 11.1(e), shall not be deemed to be contractors of ACTA or Owner), in which case POLA, POLB, ACTA or the other Railroad (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct. Notwithstanding the preceding sentence, to the extent an accident or derailment is caused by an act or omission of the Corridor Dispatcher, the Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee, or any of their respective employees, such contractor shall be responsible for the injury, death and damage resulting therefrom in proportion to its relative degree of fault (and if such contractor or its insurance does not cover such share of liability, then POLA, POLB, UP and BNSF shall bear that share of the liability in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a)).

(f) In a train accident or derailment involving the trains of more than one Railroad, each Railroad shall be responsible for any injury to or death of its own employees and damage to its equipment, and each Railroad shall share (in proportion to its relative degree of fault) the responsibility for injury to or death of third parties (as and to the extent set forth in Section 11.1(b)) and damage to property (including damage to Rail Corridor structures), except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of POLA, POLB or ACTA, or their respective invitees, contractors not working under a contract approved by the Operating Committee or direct employees (*i.e.*, not the

Railroads, their employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any third party contractor working under a contract approved by the Operating Committee, which, for purposes of this Section 11.1(f), shall not be deemed to be contractors of ACTA or Owner), in which case POLA, POLB or ACTA (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct. Notwithstanding the preceding sentence, to the extent an accident or derailment is caused by an act or omission of the Corridor Dispatcher, the Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee, or any of their respective employees, such contractor shall be responsible for the injury, death and damage resulting therefrom in proportion to its relative degree of fault (and if such contractor or its insurance does not cover such share of liability, then POLA, POLB, UP and BNSF shall bear that share of the liability in the proportions, and in accordance with the provisions and limitations, set forth in Section 11.1(a)). Further, the Railroads may agree among themselves that, in the circumstance where the act or omission of an employee of one Railroad causes or contributes to such an accident, the first Railroad shall be responsible for the death or injury to the employees of the other Railroad, and the damage of the other Railroads' equipment.

(g) With respect to operations on portions of the UP San Pedro Branch which are not considered Port-Owned Tracks under this Agreement, as between the Railroads, on the one hand, and POLA, POLB and ACTA, on the other, the Railroads agree that none of POLA, POLB or ACTA shall have any liability for any injury to or death of any employees, or for any damage to any equipment, of any Railroad operating on the UP San Pedro Branch pursuant to the provisions of this Agreement, except to the extent such injury, death or damage is caused by the gross negligence or intentional misconduct of POLA, POLB or ACTA or their respective invitees, contractors not working under a contract approved by the Operating Committee or direct employees (*i.e.*, not the Railroads, the Railroads' employees or the Corridor Dispatcher, Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee, which, for purposes of this Section 11.1(g), shall not be deemed to be contractors of ACTA or Owner), in which case POLA, POLB or ACTA (as the case may be) shall be liable for such injury, death or damage to the extent of such gross negligence or intentional misconduct. As among the Railroads, liability for such matters shall be apportioned in accordance with any detour or other agreement then in effect between or among the Railroads involved or, if no such agreement is then in effect, then in accordance with the Standard Detour Agreement.

(h) The party (or parties) responsible or liable pursuant to this Section 11.1 for any death, injury or damage shall indemnify, defend and hold harmless the other parties (and such other parties' respective officers, directors and employees), from and against any claim, action, proceeding, investigation or demand arising, in whole or in part, from such incident, except to the extent such claim arises out of the gross negligence or intentional misconduct of the party seeking indemnity, all in accordance with Section 11.5.

(i) If and to the extent that the Port Rail Agreements (or any other agreements among POLA and the Railroads or POLB and the Railroads with respect to the Port-Owned Tracks in the respective Ports) allocate liability for injury, death or damage arising from operations on such Port-Owned Tracks, such other agreements shall control with respect to allocating liability with respect to such Port-Owned Tracks, and any provisions to the contrary

contained in this Agreement regarding liability for operations on such Port-Owned Tracks are deemed superseded by such other agreements are terminated or expire in accordance with their respective terms.

(j) The provisions of this Section 11.1 shall bind and are for the benefit of the parties to this Agreement only, and no other person or entity shall be entitled to rely upon or benefit from any of such provisions.

(k) Notwithstanding anything to the contrary set forth in this Section 11.1 or elsewhere in this Agreement, the Port Rail Operator is not, and shall not be deemed to be, an agent, contractor or employee of POLA, POLB or ACTA.

## **11.2 Insurance.**

(a) Each Railroad may self-insure against its liability risks under this Agreement to levels customary in the industry for Class I railroads. Notwithstanding the foregoing, if the Operating Committee so determines, POLA, POLB, UP and BNSF together shall obtain a commercial general liability insurance policy covering the risks described in Section 11.1, which insurance policy shall have limits and deductibles acceptable to the Operating Committee (and if such a policy of general liability insurance is obtained, (i) each of POLA, POLB, UP and BNSF shall be responsible for paying 25% of the premiums for such liability policy, (ii) each of POLA, POLB, UP and BNSF shall be a named insured thereunder, and (iii) such liability policy shall name ACTA as an additional insured).

(b) Each contract with the Corridor Dispatcher, the Corridor Maintenance Contractor and other third parties shall require that such entities obtain and keep in force at all times during the term of such contract a commercial general liability insurance policy on an occurrence basis, with each such policy to afford protection to a limit of not less than \$25 million (which limit may be increased by the Operating Committee) with respect to personal injury or death to one or more persons or damage to property caused by or arising from the acts or omissions of such contractor. Each of POLA, POLB, ACTA, UP and BNSF shall be a named insured under such insurance policies. If at any time either of the Railroads is acting as the Corridor Dispatcher or the Corridor Maintenance Contractor, such Railroad shall obtain and keep in effect the above-described liability insurance while acting in such capacity, and shall not be permitted to self insure against liability arising from its acts or omissions while acting in such capacity, but if both Railroads together are acting as the Corridor Dispatcher or the Corridor Maintenance Contractor, the Railroads shall be permitted to self-insure against liability arising from their acts or omissions while acting in such capacity.

(c) ACTA shall obtain and continuously keep in force during the term of this Agreement an all risk policy of property insurance insuring, as and to the extent required by the ACTA Financing, against loss and damage by all risks of physical loss to the Rail Corridor (including earthquake and flood, if such coverages are required by the ACTA Financing). The specific coverages, limits and deductibles of such property insurance shall satisfy the requirements of the ACTA Financing (and ACTA shall use commercially reasonable efforts to obtain such insurance coverage at the lowest premiums practicable). Subject to the requirements of the ACTA Financing, the deductible under such insurance may be adjusted from time to time

by ACTA and the Operating Committee to reduce the cost of such insurance. The proceeds of such insurance policy may be assigned by ACTA pursuant to the Master Trust Indenture.

(d) ACTA shall obtain and continuously keep in force, at all times that the ACTA Financing and the Federal Loan are outstanding, business interruption insurance in an amount not less than 100% of the Use Fees and Container Charges payable by the Railroads for a two-year period (based on ACTA's projections for such two year period, which shall be adjusted as of the beginning of each calendar year). ACTA shall use commercially reasonable efforts to obtain such insurance coverage at the lowest premiums practicable. Subject to the requirements of the ACTA Financing, the deductible under such insurance may be adjusted from time to time by ACTA and the Operating Committee to reduce the cost of such insurance, provided that any deductible under such insurance may not exceed the period (currently 5 consecutive days) set forth in Sections 7.3(f) and 7.3(g) for relief from Use Fees and Container Charges, respectively, for a complete blockage of the Rail Corridor (or if the deductible is expressed as a dollar amount, then such deductible cannot exceed the Use Fee and Container Charges revenues generated during such period). The proceeds of such insurance shall be payable in accordance with the Master Trust Indenture.

(e) Any insurance required by this Section 11.2 shall not be permitted to expire or be canceled or materially changed while this Agreement is in effect except upon 60 days' prior written notice to ACTA. Each insurance policy required hereunder shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits, except after 60 days' prior written notice has been given to ACTA.

(f) Prior to the commencement of joint rail operations on the Rail Corridor, any party required to obtain insurance pursuant to in this Section 11.2 shall deliver to the other parties to this Agreement original endorsements showing that the insurance required hereunder is in effect. Upon renewal of each required insurance policy, original endorsements to such renewal policies also shall be delivered to the parties.

(g) Nothing in this Agreement shall be deemed to preclude any member of the Operating Committee from asserting any defenses it may have against a claim that the Operating Committee, or any member thereof, is liable for losses or damages as a result of any actions or inactions of the Operating Committee, including, without limitation, asserting that the matter giving rise to the claim was caused in whole or in part by actions or inactions of parties other than the Operating Committee.

### **11.3 Environmental Liability.**

(a) Each party shall be responsible for, and shall indemnify, defend and hold harmless the other parties from and against, any claims, liabilities, losses or actions arising out of the release of Hazardous Substances within, on, over or under the Rail Corridor and/or the Port-Owned Tracks to the extent such release is a release from the equipment, or is caused by the activities, of such party (and, for purposes of this Section 11.3, the UP San Pedro Branch shall be considered a Port-Owned Track to the extent BNSF operates on such branch pursuant to this Agreement).

(b) Notwithstanding the provisions of Section 11.3(a), ACTA and Owner agree that neither ACTA, POLA nor POLB shall pursue any Railroad for any release of Hazardous Substances that occurred prior to the date hereof on any portion of property on which such Railroad did not operate prior to the date hereof (provided that the foregoing shall not preclude ACTA, POLA and/or POLB from pursuing UP for releases of Hazardous Substances on property previously owned by the former SPT). Each Railroad shall indemnify, defend and hold the other Railroads harmless from and against any actions, proceedings, governmental investigations, losses, damages, costs and expenses (including reasonable attorneys' fees) which may reasonably be incurred or suffered by such other Railroads in connection with or arising from a release of Hazardous Substances by such indemnifying Railroad, its agents, shippers or invitees, which occurred on a portion of the Rail Corridor owned by the indemnifying Railroad prior to the time that the indemnified Railroads operated on such property, except to the extent such Hazardous Substances were released by, or from other property owned by, such other Railroad, to the extent such losses, damages, costs and expenses exceed \$10,000 in any year.

(c) Nothing in this Section 11.3 is intended, or shall be deemed, to alter, modify or limit the provisions of existing agreements by, between and among Owner, POLA, POLB and/or one or more of the Railroads with respect to Hazardous Substances.

#### **11.4 Casualty.**

(a) If all or any portion of the Rail Corridor is damaged or destroyed by any casualty while the ACTA Financing and/or the Federal Loan is outstanding, all proceeds of the insurance maintained by ACTA pursuant to Sections 11.2(c) and 11.2(d) shall be applied in accordance with the provisions of the Master Trust Indenture (or if the ACTA Financing no longer is outstanding, but the Federal Loan still is outstanding, then in accordance with the documents evidencing the Federal Loan). Except as otherwise expressly set forth in this Agreement, no party shall have any obligation to repair or restore damage to the Rail Corridor except to the extent insurance proceeds actually are applied for such purposes under the Master Trust Indenture (or, if applicable, the documents evidencing the Federal Loan).

(b) After the ACTA Financing and the Federal Loan have been paid in full, and except as otherwise expressly set forth in this Agreement, no party shall have any obligation to any other party hereto to repair or replace damage to the Rail Corridor or any Port-Owned Tracks caused by any casualty, unless insurance proceeds are available to make such repairs or replacement. In furtherance of the foregoing, POLA, POLB and ACTA will be entitled to immediately and unilaterally remove from service any portion of the Rail Corridor or any Port-Owned Tracks, without liability to any party hereto, if it is damaged or destroyed by any casualty. In such event, ACTA shall be responsible for (and shall pay all costs associated with) obtaining any governmental or regulatory approvals that may be necessary in connection with any such removal from service. Except as otherwise expressly set forth in this Agreement, in no event shall any party have any liability to any other party for injury to persons or damage to property resulting from any casualty. Subject to the foregoing provisions regarding the application of insurance proceeds, if Owner determines, in its sole and absolute discretion, that material damage caused by a casualty to all or any portion of the Rail Corridor renders continuation of operations under this Agreement impracticable, Owner shall be entitled, unilaterally, without joinder by any Railroad and without liability therefor, to terminate this



Agreement by written notice to the Railroads, provided that such notice must be given within 120 days after such casualty. In such event, Owner shall be responsible for obtaining any governmental or regulatory approvals that may be necessary in connection with any such removal from service. This Agreement shall be deemed terminated on the later of (i) the date such notice is delivered or (ii) the date on which any governmental or regulatory approvals or exemptions necessary to terminate this Agreement have been obtained, provided that each Railroad shall have 90 days after the effective date of termination to remove its property from the Rail Corridor.

#### **11.5 Indemnification.**

(a) If any claim, action, proceeding, investigation or demand shall be brought or threatened against any person entitled to indemnification under this Article XI (an “**Indemnitee**”), by reason of any matter requiring indemnification (an “**Indemnified Matter**”), Indemnitee shall give written notice thereof to the person required to make such indemnification (an “**Indemnitor**”), which notice shall contain a reasonably detailed description of the event, occurrence or condition giving rise to the claim for indemnity and shall enclose a true copy of any and all documents served upon or received by Indemnitee.

(b) If Indemnitee shall suffer or incur any liabilities, losses, causes of action, penalties, demands, detriments, claims, damages, costs, judgments or expenses (including reasonable attorneys’ fees) (collectively, “**Losses**”) arising from or in connection with any Indemnified Matter, Indemnitor shall pay Indemnitee the total of such Losses suffered and incurred by Indemnitee within 90 days following demand therefor and delivery of an account of Losses suffered by Indemnitee and thereafter as such Losses are incurred and reported to Indemnitor by Indemnitee, and any such Losses which are not paid within such 90 day period shall be delinquent. In addition to all other rights and remedies of Indemnitee against Indemnitor provided herein, or under applicable law, Indemnitor shall pay to Indemnitee interest accrued on any delinquent payments at the Overdue Rate from the date such payment is due until paid.

(c) Indemnitor shall at its own cost, expense, and risk: (i) defend Indemnitee in all suits, actions, or other legal or administrative proceedings that may be brought or instituted against an Indemnitee on account of any Indemnified Matter with counsel selected by Indemnitor and reasonably acceptable to Indemnitee; (ii) pay and/or satisfy any judgment or decree that may be recorded against Indemnitee in any such suit, action, or other legal or administrative proceedings; and (iii) reimburse Indemnitee for all Losses incurred by Indemnitee relating to or in connection with any such suit, action, or other legal or administrative proceedings.

(d) Notwithstanding anything in this Agreement to the contrary, Indemnitor shall not, without the prior written consent of Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any action, suit, proceeding, or claim relating, directly or indirectly, to any Indemnified Matter or consent to the entry of any judgment therein in excess of \$100,000.

(e) Without limiting the rights of Indemnitee pursuant to this Section 11.5, Indemnitee shall have the right to join and participate in, as a party if it so elects, any suits, actions, or other legal or administrative proceedings that may be brought or instituted against an

Indemnatee on account of any Indemnified Matter. In any such case, Indemnatee may, at its own cost and expense, employ its own legal counsel and consultants to prosecute, negotiate, or defend any claim, action, or cause of action provided that Indemnatee shall not, without the prior written consent of Indemnitor (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any action, suit, proceeding, or claim relating, directly or indirectly, to any Indemnified Matter or consent to the entry of any judgment therein in excess of \$100,000.

(f) For purposes of the indemnification provisions of this Agreement, "POLA" shall include the City of Los Angeles, the Port of Los Angeles and its Board of Harbor Commissioners, "POLB" shall include the City of Long Beach, the Port of Long Beach and its Board of Harbor Commissioners, "ACTA" shall include the ACTA Board of Commissioners, and the indemnification in favor of each party to this Agreement shall include its respective officers, directors and employees.

#### **11.6 Releases.**

(a) To the maximum extent permitted by applicable law, and for so long as ACTA has not become a member of the Operating Committee as a result of an assignment pursuant to Section 15.1(b), POLA, POLB, UP and BNSF each hereby expressly releases, remises and discharges forever ACTA from any and all Losses which may have been or in the future may be incurred or suffered by POLA, POLB, UP or BNSF or its respective property, caused by or otherwise resulting from any act or omission by the Corridor Dispatcher or the Corridor Maintenance Contractor, their respective affiliates or subsidiaries and their respective employees, agents, representatives, contractors, or invitees.

(b) POLA, POLB, UP and BNSF, after having read and been advised by legal counsel regarding the provisions of California Civil Code Section 1542 and in any and all similar statutes, rules and regulations and any other statute of the United States, hereby agree, represent and warrant that the matters released in this Section 11.6 are not limited to the matters which are known or disclosed. California Civil Code Section 1542 reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

POLA, POLB, UP and BNSF each hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and each further agrees, represents and warrants that the releases contained in this Section 11.6 have been negotiated and agreed upon in light of that realization and that it nevertheless hereby intends to release and discharge ACTA from any such causes of action, claims, demands, controversies, damages, costs, losses and expenses.

POLA: \_\_\_\_\_ POLB: \_\_\_\_\_ UP: \_\_\_\_\_ BNSF: \_\_\_\_\_

**11.7 Interpretation.**

(a) Each of the parties hereto hereby agrees that this Agreement is not intended to be, and none shall construe it as, a contract or agreement covered by the provisions of California Civil Code Section 2784.5 (which Section concerns certain hauling, trucking or cartage contracts or agreements).

(b) Each of the parties hereto hereby agrees that the Corridor Dispatcher, the Corridor Maintenance Contractor and any other third party contractor working under a contract approved by the Operating Committee are not, and none of them are intended to be, the agent, servant or independent contractor (as such terms are used in California Civil Code Section 2782) of ACTA. In addition, each of POLA, POLB, UP and BNSF agrees that neither it nor any of its agents or representatives shall claim or assert that the negligence or willful misconduct the Corridor Dispatcher, the Corridor Maintenance Contractor or any other third party contractor working under a contract approved by the Operating Committee are or should be imputed to ACTA under any agency or other legal theory.

(c) Each of POLA, POLB, UP and BNSF hereby waives, to the extent permitted by applicable law with respect to ACTA only, the provisions of California Civil Code Section 2782 (which Section places limitations on indemnifications in certain construction contracts).

POLA: \_\_\_\_\_ POLB: \_\_\_\_\_ UP: \_\_\_\_\_ BNSF: \_\_\_\_\_

**11.8 Survival.** The provisions of this Article XI shall survive the expiration or earlier termination of this Agreement.

**ARTICLE XII**

**PHASING**

**12.1 Phasing of Construction.** The parties acknowledge that the Rail Corridor may be constructed in phases, or that individual portions or segments of the Rail Corridor may be improved to increase capacity over such portions or segments, and to increase rail access to either or both of the Ports (including to Terminal Island), and that such particular phases, portions or segments may reach Substantial Completion and be ready for use prior to the time that the entire Rail Corridor reaches Substantial Completion.

**ARTICLE XIII**

**OWNER NOT A CARRIER; NO JOINT VENTURE**

**13.1 Common Carrier Obligations.** Each of the Railroads shall have all of their respective duties, responsibilities and obligations arising under the Interstate Commerce Act (as amended) (and any other applicable federal or state statute) which require such Railroad to serve existing and future rail freight shippers. Each Railroad acknowledges and agrees that nothing in this Agreement or in any agreement to be executed in connection with this

Agreement shall be construed to obligate or require POLA, POLB and/or ACTA to assume or acquire any obligation to provide rail freight service or any other kind of service to any current or future shipper or receiver of any of the Railroads or to otherwise impose upon POLA, POLB and/or ACTA any obligation or responsibility associated with the status of being a railroad or common carrier.

**13.2 No Joint Venture.** Nothing contained in this Agreement shall have the effect of creating a joint venture or partnership between or among any of the parties, or of rendering one liable for any of the debts or obligations of any other, unless expressly provided in this Agreement.

**13.3 Labor Protection Matters.** Each Railroad shall be solely responsible for all labor protection matters relating to such Railroad's employees or former employees and resulting from such Railroad shifting its operation of Through Trains to the Rail Corridor. None of POLA, POLB or ACTA shall be subject to labor protection matters relating to any Railroad's employees or former employees and resulting from such Railroad shifting its operation of Through Trains to the Rail Corridor, and each Railroad shall indemnify, defend and hold POLA, POLB and ACTA harmless from and against any losses resulting from such matters.

## **ARTICLE XIV**

### **DEFAULT AND REMEDIES**

#### **14.1 Defaults.**

Railroad:

(a) Any of the following events shall be deemed a default hereunder by a

(i) Failure to pay any sums payable hereunder (including M&O Charges, Capital Expenses, Use Fees or Container Charges) within 15 days after receipt of notice of such failure.

(ii) Failure to perform any other obligation hereunder or under any rule, regulation or procedure adopted by the Operating Committee within 45 days after receipt of written notice by Owner or ACTA; provided that if such Railroad commences to cure such failure but such failure cannot be cured within such 45-day period despite diligent pursuit of such cure, such Railroad shall be entitled to an extension of 45 days to cure such default if such Railroad continues to diligently pursue such cure.

(b) Any of the following events shall be deemed a default hereunder by Owner:

(i) Failure to pay any sums payable hereunder (including Shortfall Advances) within 15 days after receipt of notice of such failure.

(ii) Failure to perform any other obligation hereunder or under any rule, regulation or procedure adopted by the Operating Committee within 45 days after

receipt of written notice by ACTA or by any Railroad; provided that if Owner commences to cure such failure but such failure cannot be cured within such 45-day period despite diligent pursuit of such cure, Owner shall be entitled to an extension of 45 days to cure such default if Owner continues to diligently pursue such cure.

(c) The failure by ACTA to perform any of its obligations hereunder within 45 days after receipt of written notice by any Railroad or Owner shall be deemed a default hereunder by ACTA; provided that if ACTA commences to cure such failure but such failure cannot be cured within such 45-day period despite diligent pursuit of such cure, ACTA shall be entitled to an extension of the period of time necessary to cure such failure if ACTA continues to diligently pursue such cure.

**14.2 Remedies.** The parties hereto acknowledge that in the event of a default or breach of any of the terms of this Agreement, damages may not be an adequate remedy, and the non-defaulting party(ies) may seek the entry of decrees for specific performance or injunctive relief in favor of such party(ies). The parties agree that their remedies under this Agreement shall consist of actual damages, specific performance or any other remedy available at law or in equity. In addition, any payment required by a party under this Agreement that is not made when due shall bear interest at the Overdue Rate until such payment is made. Each Railroad acknowledges and agrees that in no event shall ACTA have any liability to the Railroads or any of them for a breach or default under this Agreement by the Corridor Dispatcher or Corridor Maintenance Contractor, or by the other Railroad.

**14.3 Transfer of Freight Service Rights by Operation of Law.** After the occurrence of a material default or breach of the terms of this Agreement by a Railroad and the failure of such Railroad to cure such material default or breach within the cure periods set forth in Section 14.1, in addition to any other remedies Owner and ACTA have at law, in equity or under the terms of this Agreement, Owner and ACTA each shall have the right either to terminate such Railroad's rights under this Agreement to operate on the Rail Corridor and Port-Owned Tracks, or require such Railroad to transfer all of its rights under this Agreement to another Railroad on terms and conditions acceptable to Owner and ACTA but which do not discriminate against any other Railroad, provided that, (i) to the extent required under applicable law, such termination or transfer shall not take effect until it has been approved by any judicial or regulatory body with jurisdiction over such matters, and (ii) if the amounts and obligations listed in Section 7.3(b) have not been paid in full, then Owner and ACTA may only exercise such transfer right and may not terminate this Agreement. Upon such termination or transfer, such Railroad shall (i) immediately cease all rail freight service on the Rail Corridor and Port-Owned Tracks; (ii) remove from the Rail Corridor and Port-Owned Tracks, within 30 days of such termination or transfer, all trains and other equipment owned by such Railroad; and (iii) surrender to Owner, within 30 days of such transfer, all rights under this Agreement to operate overhead rail freight service over the Rail Corridor, and this Agreement shall thereupon terminate with respect to such Railroad.

**14.4 ARBITRATION.** IN THE EVENT OF A CLAIM OR DISPUTE ARISING OUT OF THIS AGREEMENT, THE DISPUTING PARTIES SHALL MAKE GOOD FAITH EFFORTS TO RESOLVE THE DISPUTE THROUGH NEGOTIATION.

FAILING A RESOLUTION OF THE DISPUTE OR CLAIM THROUGH THESE GOOD FAITH EFFORTS WITHIN 30 DAYS AFTER THE COMMENCEMENT OF THE DISPUTE OR CLAIM, ANY DISPUTING PARTY MAY SERVE UPON THE OTHER DISPUTING PARTIES, WITHIN 60 DAYS AFTER EXPIRATION OF THE 30-DAY PERIOD PROVIDED FOR IN THE PRECEDING SENTENCE, A WRITTEN DEMAND FOR ARBITRATION. THE DISPUTING PARTIES SHALL, WITHIN 15 DAYS THEREAFTER, OR WITHIN SUCH EXTENDED PERIOD AS THEY SHALL AGREE TO IN WRITING, ATTEMPT TO AGREE UPON A MUTUALLY SATISFACTORY ARBITRATOR WHO IS EXPERIENCED IN RAILWAY BUSINESS AND MANAGEMENT. IF THEY ARE UNABLE TO AGREE, A NEUTRAL ARBITRATOR WHO IS FAMILIAR WITH RAILWAY BUSINESS AND MANAGEMENT SHALL BE DESIGNATED PURSUANT TO SECTION 1281.6 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. SECTION 1283.05 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE IS SPECIFICALLY MADE APPLICABLE TO THIS AGREEMENT. THE ARBITRATOR SHALL GIVE EACH OF THE PARTIES HERETO 10 DAYS PRIOR WRITTEN NOTICE OF THE TIME AND PLACE OF THE INITIAL HEARING AND SHALL PROCEED WITHOUT DELAY TO HEAR AND DETERMINE THE MATTERS IN SUCH DISPUTE. THE AWARD OF THE ARBITRATOR SHALL BE SUPPORTED BY LAW AND SUBSTANTIAL EVIDENCE AND MUST COMPLY WITH THE TERMS OF THIS AGREEMENT, AND FURTHER, THE ARBITRATOR SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE MAKING OF AN AWARD WHICH FAILS TO COMPLY WITH THE REQUIREMENTS OF THE IMMEDIATELY PRECEDING SENTENCE SHALL BE DEEMED TO BE IN EXCESS OF THE ARBITRATOR'S POWERS AND THE COURT SHALL VACATE THE AWARD IF, AFTER REVIEW, IT DETERMINES THAT THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED. IF THE AWARD COMPLIES WITH THIS SECTION, IT SHALL BE BINDING ON THE DISPUTING PARTIES SO LONG AS SUCH AWARD IS NOT IN EXCESS OF \$50,000, OR HAS THE EFFECT OF COSTING A PARTY SUCH AMOUNT. AWARDS IN EXCESS OF \$50,000 (OR WITH THE EFFECT OF COSTING A PARTY SUCH AMOUNT) SHALL BE APPEALABLE TO THE SUPERIOR COURT IN AND FOR LOS ANGELES COUNTY FOR A TRIAL DE NOVO. ANY ARBITRATION PURSUANT TO THIS PROVISION SHALL BE CONDUCTED IN LOS ANGELES COUNTY, CALIFORNIA.

NO PERSON SHALL ACT AS A NEUTRAL ARBITRATOR WHO IN ANY WAY HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULTS OF THE ARBITRATION OR HAS ANY PAST OR PRESENT RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR COUNSEL. FAILURE TO DISCLOSE ANY SUCH INTEREST OR RELATION SHALL BE GROUNDS FOR VACATING THE AWARD.

THE EXPENSES AND FEES OF THE ARBITRATOR SHALL BE PAID IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1284.2 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. ANY AWARD BY THE ARBITRATOR SHALL INCLUDE REASONABLE ATTORNEYS' FEES TO THE PREVAILING PARTY.

POLA: \_\_\_\_\_ POLB: \_\_\_\_\_ ACTA: \_\_\_\_\_

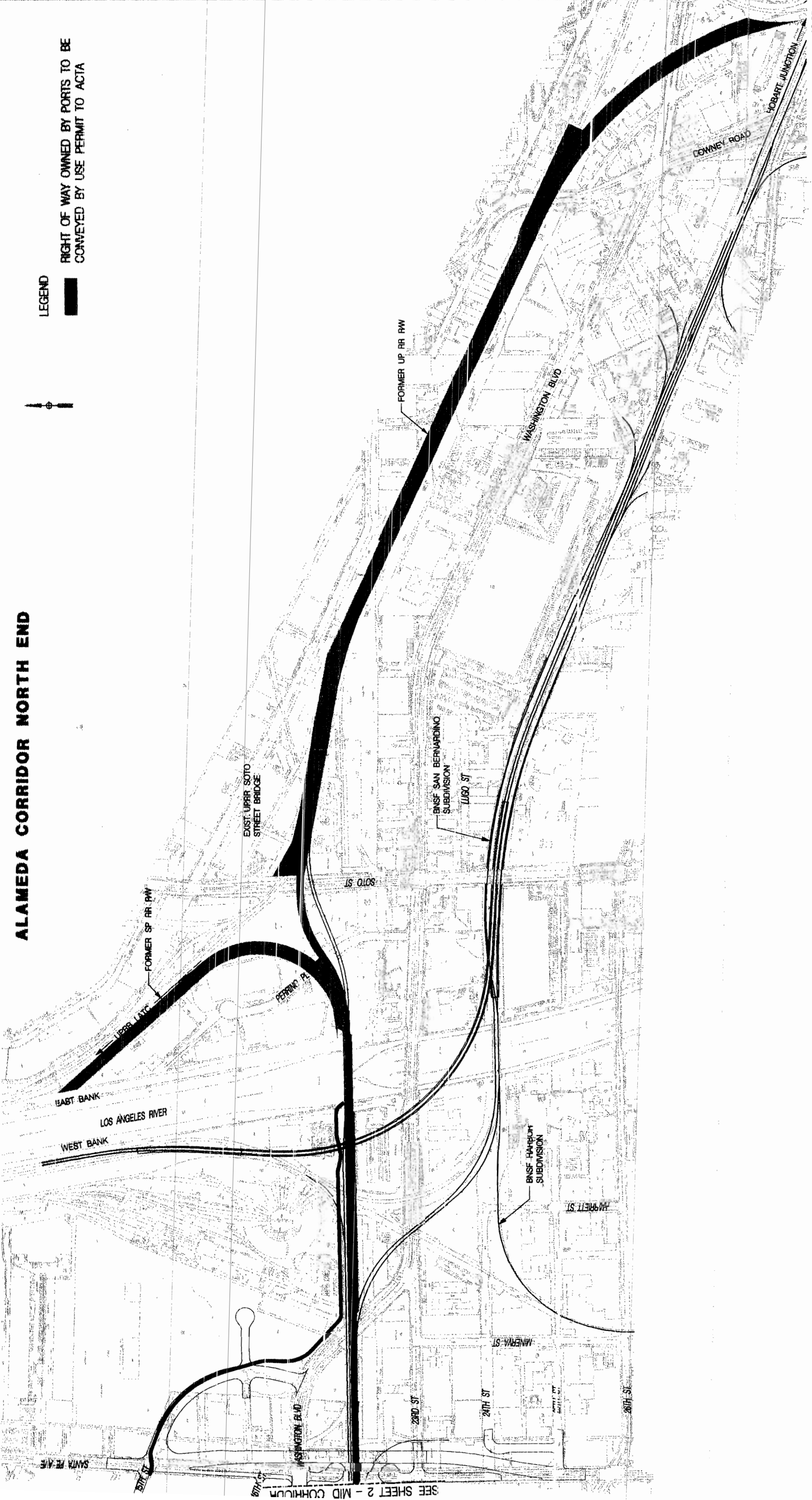


ALAMEDA CORRIDOR NORTH END



LEGEND

RIGHT OF WAY OWNED BY PORTS TO BE  
CONVEYED BY USE PERMIT TO ACTA

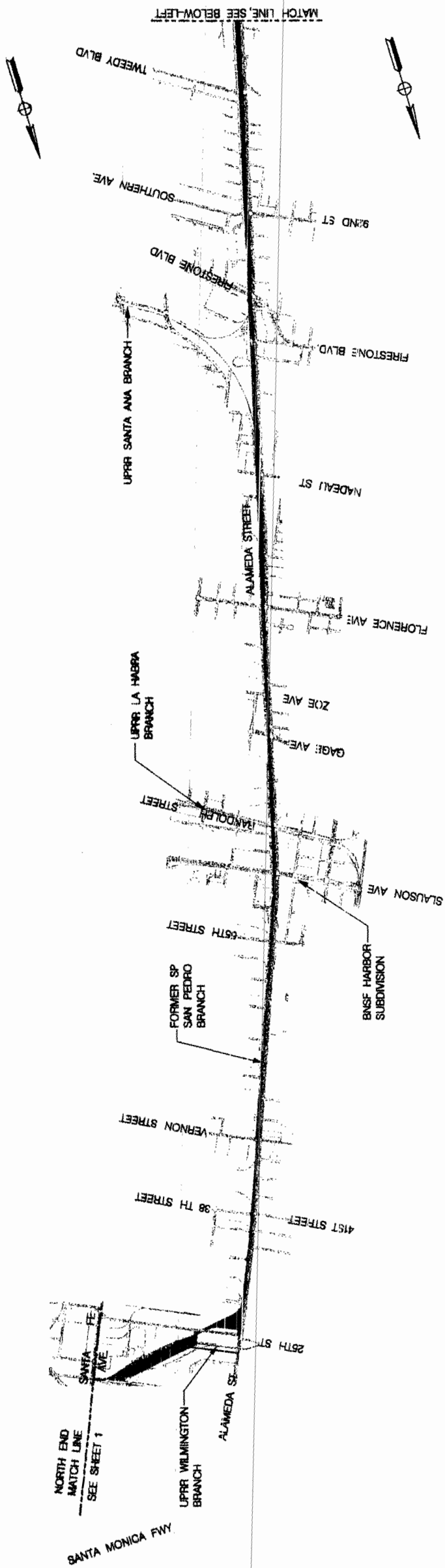


AC-REI.1



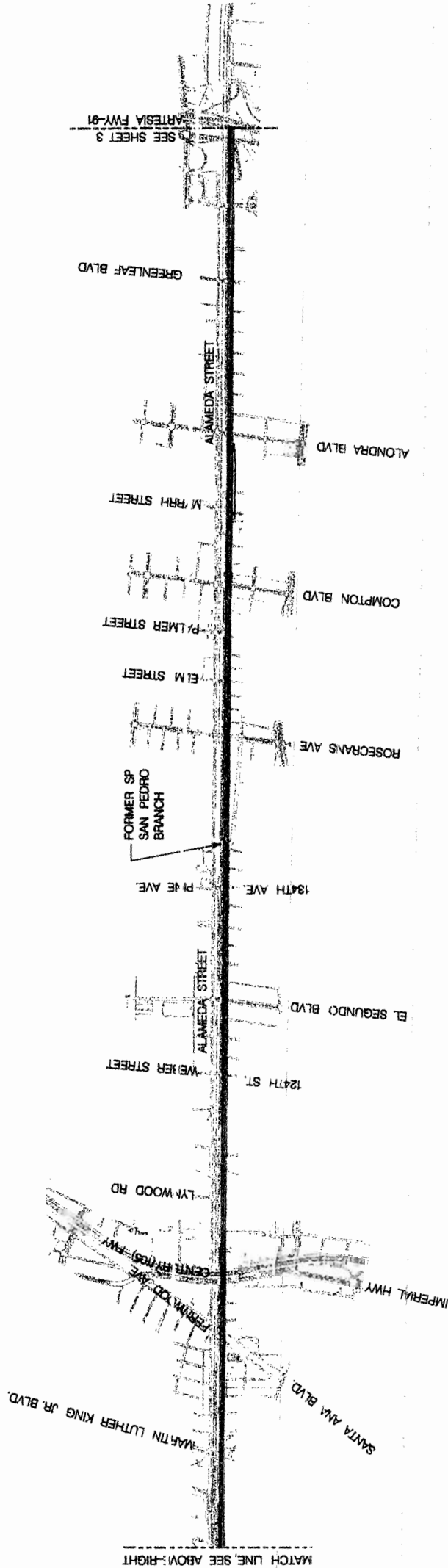
ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY  
GENERAL OVERVIEW OF  
RAIL RIGHT OF WAY  
ACQUIRED FOR ALAMEDA CORRIDOR  
SHEET 1 OF 3

# ALAMEDA CORRIDOR-MID CORRIDOR

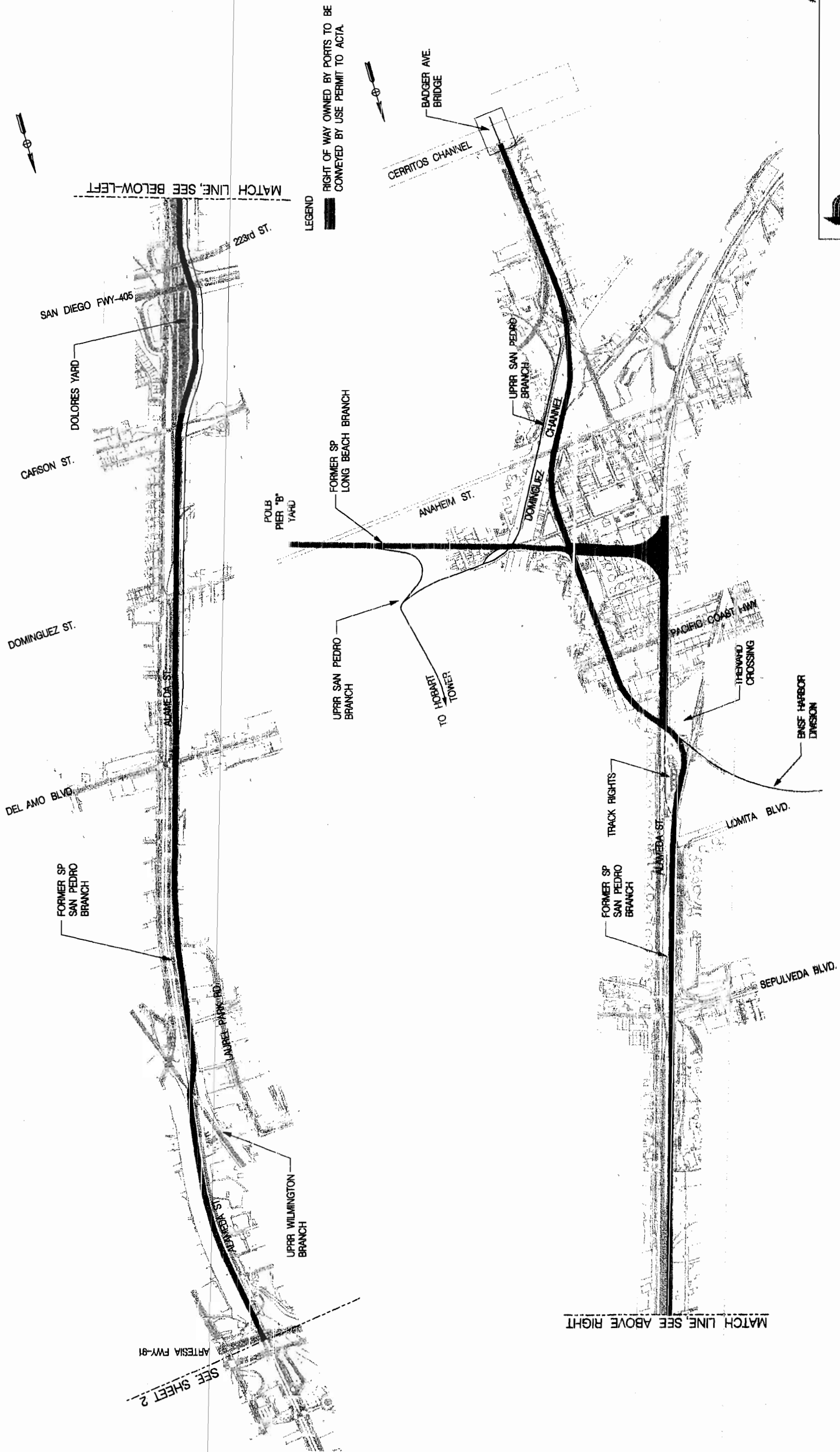


## LEGEND

RIGHT OF WAY OWNED BY PORTS TO BE  
CONVEYED BY USE PERMIT TO ACTA



# ALAMEDA CORRIDOR-SOUTH END



UP: \_\_\_\_\_

BNSF: \_\_\_\_\_

**14.5 Right to Sue for Damages.** Nothing in this Agreement shall be deemed to prohibit any party hereto from bringing an action against a party who defaulted hereunder to recover damages suffered as a result of the default; provided that ACTA shall have the exclusive right to bring any action to recover Use Fees, Container Charges, Shortfall Advances, M&O Charges or other sums (including interest thereon) required to be paid to ACTA under the terms of this Agreement.

**14.6 Survival.** The provisions of this Article XIV shall survive the termination of this Agreement.

## ARTICLE XV

### MISCELLANEOUS MATTERS

**15.1 Assignment.**

(a) The qualifications and reputation of the parties hereto are material inducements to the other parties in entering into this Agreement. Therefore, except as provided in Section 7.1(c), Section 14.3 and in this Section 15.1, no party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other parties.

(b) Notwithstanding the foregoing, (i) Owner may assign its rights (without any modification thereof) under this Agreement to ACTA or another joint powers authority or government or public entity in which POLA and POLB are members (which entity must agree in writing to perform all of the obligations of Owner hereunder), (ii) POLA and POLB may transfer, lease or grant a license, permit or other rights in or to the Rail Corridor property to ACTA or another entity without assigning their rights under this Agreement, (iii) Owner may assign any of its obligations (without any modification thereof) under this Agreement to an entity reasonably acceptable to the Railroads (which entity must agree in writing to perform all of the obligations of Owner hereunder), and (iv) Owner shall have the right to permit other Class I railroads, or financially responsible and experienced regional railroads, to use the Rail Corridor, provided that such use shall be on all of the terms and conditions of this Agreement. Furthermore, at such time as the ACTA Financing described in Section 7.2 is paid in full, Owner shall have the right to cause ACTA to terminate all further activities and involvement in connection with the Rail Corridor (which right shall be exercised by Owner's delivery of written notice of such election to BNSF and UP) and, from and after such election, (x) ACTA shall have no further rights, duties or obligations under this Agreement (provided that nothing shall relieve ACTA from any liability it may have under this Agreement arising prior to such termination), and (y) wherever in this Agreement the term ACTA is used, such term shall instead be deemed to refer to Owner.

(c) No Railroad may assign its rights under this Agreement (including the right to use the Rail Corridor) without Owner's consent, which may be withheld in Owner's sole discretion, provided, however, notwithstanding any other provision of this Agreement, (i) any Railroad may assign all (but not less than all) of its rights under this Agreement to another of the

Railroads, or any other Class I railroad or a financially responsible and experienced regional railroad, without Owner's consent, provided that such other Railroad or railroad assumes all of the assigning Railroad's obligations under this Agreement, and (ii) any Railroad may assign all (but not less than all) of its rights under this Agreement to its successor entity pursuant to a merger or reorganization, without Owner's consent, provided that the successor entity assumes all of the obligations of that Railroad under this Agreement.

(d) Notwithstanding anything to the contrary set forth in this Agreement, Owner reserves the right, subject to the terms of the Port Rail Agreements, to grant to a third party such trackage rights or operating easements over the Rail Corridor and the Port-Owned Tracks as may be necessary to gather, distribute and switch rail cars within the Port areas (as such Port areas are shown on Page 4 of the Map) and to and from the "Manuel Sidings" described in Section 9.1, provided that such third party shall be subject to all of the terms and conditions of this Agreement.

(e) Subject to the other provisions of this Section 15.1, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective transferees, successors and assigns.

**15.2 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.**

**15.3 Headings.** The article and section headings in this Agreement are for convenience only and shall not be used in the interpretation or considered part of this Agreement.

**15.4 Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

**15.5 Time.** Time is of the essence of this Agreement.

**15.6 Exhibits and Recitals.** All Recitals herein and exhibits attached hereto are incorporated herein by this reference.

**15.7 Construction.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto for any reason (including by virtue of the fact that this Agreement may have been drafted or prepared by counsel for one of the parties, it being recognized that all parties hereto, and their respective counsel, contributed materially and substantially to the preparation of this Agreement).

**15.8 No Third Party Beneficiaries.** It is the intent of each party to this Agreement that each provision of this Agreement inure only to the benefit of the parties which

execute this Agreement, and their permitted successors and assignees, and shall not inure to the benefit of any other person.

**15.9 Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or (ii) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To POLA:

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90733  
Attn: Executive Director  
Telecopy No. (310) 732-0291  
Confirmation No. (310) 732-3456

To POLB:

Port of Long Beach  
925 Harbor Plaza  
Long Beach, California 90801  
Attn: Executive Director  
Telecopy No. (562) 901-1733  
Confirmation No. (562) 570-4100

To ACTA:

Alameda Corridor Transportation Authority  
One Pacific Plaza  
Suite 650  
Carson, California 90745  
Attn: General Manager  
Telecopy No. (310) 233-7483  
Confirmation No. (310) 233-7480



To BNSF:

Burlington Northern Santa Fe  
2600 Lou Menk Drive  
P.O. Drive 961034  
Fort Worth, Texas 76131  
Attn: Senior Vice President of Operations (with a copy to Director-Contracts  
and Joint Facilities)  
Telecopy No. (817) 352-7219  
Confirmation No. (817) 352-4936

To UP:

Union Pacific Railroad Company  
1416 Dodge Street  
Room 1206  
Omaha, Nebraska 68179  
Attn: Executive Vice President of Operations (with a copy to Director-Joint  
Facilities)  
Telecopy No. (402) 271-6971  
Confirmation No. (402) 271-6529

**15.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

**15.11 Authority.** Each of the parties to this Agreement represents and warrants (each party for itself only) to the other parties that it is fully authorized to enter into this Agreement and that this Agreement is binding and enforceable against it and its respective successors and assigns, in accordance with the terms hereof. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

**15.12 All Negotiations Incorporated.** All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters herein other than those incorporated in this Agreement or expressly referenced in this Agreement. This Agreement supersedes the MOU in all respects and, effective from and after the date hereof, the MOU shall have no further force or effect.

**15.13 Real Property Matters.** Nothing contained in this Agreement shall be deemed or construed (i) to give or convey to any Railroad any ownership interest or rights in the Rail Corridor or the Port-Owned Tracks (including any right to grant, convey or enter into new leases, licenses or easements, or any right to receive, or any interest or rights to, income from leases, licenses or easements now existing or hereafter granted by Owner, POLA and/or POLB), or (ii) except as expressly set forth herein, to give or convey to any of the Railroads or the Operating Committee any right to approve or consent to any property management

decisions relating to the Rail Corridor or the Port-Owned Tracks (including the granting of leases, licenses or easements), provided that this Section 15.13 shall not alter, limit or modify provisions with respect to such matters which may be contained in existing agreements between or among POLA and/or POLB and one or more of the Railroads.

**15.14 Allocation of Federal and State Environmental Benefits.** Owner and the Railroads agree that, as between Owner and the Railroads, upon Substantial Completion all benefits or credits, including such credits as may be generically identified as marketable emissions credits, under the Federal Implementation Plan and/or the State Implementation Plan or a similar program administered by the South Coast Air Quality Management District of the State of California or any successor thereto, which may thereafter accrue, result, or become available from the construction of the Project, the construction of on-dock rail facilities in the Ports, and the operation of Through Trains on the Rail Corridor (including the reduction of truck trips to and from the Ports), shall be allocated one-half (50%) to Owner and one-half (50%) to Railroads, except that: (i) all such benefits or credits which may accrue or result from a Railroad's use of new, upgraded or different equipment, including locomotives utilizing alternative fuels or fuel saving improvements, more efficient prime movers (engines), traction motors, or controls, or different types of propulsion, or from other operational changes specific to such Railroad (other than simply shifting Through Train movements onto the Rail Corridor) shall be allocated entirely (100%) to such Railroad, and (ii) all such benefits or credits which may accrue or result from an increase in the speed of Through Trains operating over the Rail Corridor, or from the elimination of grade crossings shall be allocated entirely (100%) to Owner. The method by which the Railroads' one-half (50%) share of benefits or credits shall be allocated as to a specific Railroad may be addressed and in a separate agreement among the Railroads. Owner and each Railroad shall reasonably cooperate with each other with respect to claiming any benefit or credit covered by this Section 15.14; however, no party shall be required to incur any expense in connection with such cooperation unless the party requesting such cooperation agrees to reimburse the party giving the cooperation for all reasonable costs and expenses incurred in connection therewith.

**15.15 Railroad Crossings and Connections.** Each of the Railroads acknowledges that Owner has acquired the UP San Pedro Branch, the portion of BNSF's Harbor Subdivision between Milepost 27.6 and Milepost 28.3, and portions of UP's Long Beach Branch, San Pedro Branch, Wilmington Branch and Vernon Line ("**Acquired Rail Lines**"). Each Railroad owns, or has an easement or trackage rights over, other rail lines ("**Other Rail Lines**") that cross and, in certain cases, connect to, the Acquired Rail Lines. Pursuant to the SPT Purchase Agreement, the UP Purchase Agreement and the ATSF Purchase Agreement, Owner acquired, among other things, the right to use the Acquired Rail Lines to cross the Other Rail Lines, to allow others (including the Railroads) to cross the Other Rail Lines at such locations, and to make modifications and improvements to the Acquired Rail Lines (including installation of additional tracks or grade separations of the Acquired Rail Lines or the Other Rail Lines) at such locations (collectively, the "**Crossing Rights**"). Each Railroad, for itself only, hereby consents to the acquisition of the Crossing Rights by Owner and agrees that Owner may exercise the Crossing Rights at any time, whether or not (i) the Rail Corridor is under construction or completed, (ii) a default exists under any of the documents governing the crossing or connection in question or (iii) Owner is a common carrier.

**15.16 Amendments.** No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties. No provision of this Agreement shall be revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

**15.17 Recordation and Termination.** Without the prior written consent of all parties hereto, no party may record this Agreement or any memorandum thereof. Upon termination of the rights granted to the Railroads or any of them hereunder, the affected Railroad(s) shall execute, acknowledge and deliver to Owner and ACTA a copy of any appropriate instrument or instruments evidencing the termination.

**15.18 Attorneys' Fees.** In any action brought to declare the rights granted herein or to enforce the provisions of any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees, costs and expenses, (including fees for services rendered by a party's internal or staff counsel) both at trial and in connection with any appeal, in any amount determined by the court or arbitrator. The provisions of this Section 15.18 shall survive the entry of any judgment.

**15.19 Waiver.** The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

**15.20 Forum. EXCEPT FOR MATTERS SUBMITTED TO ARBITRATION IN ACCORDANCE WITH SECTION 14.4, THE PARTIES HERETO AGREE THAT ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS RELATED TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY MUST BE BROUGHT, FILED, PROSECUTED AND DEFENDED IN EITHER THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES OR THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.**

**15.21 No Relocation Assistance.** Each Railroad understands and agrees that nothing contained in this Agreement shall create any right in such Railroad for relocation assistance or payment upon expiration or termination of this Agreement. Each Railroad acknowledges and agrees that it shall not be entitled to relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.), the Uniform Relocation Assistance and Real Property Act of 1970, as amended (42 U.S.C. Section 4601 et seq.), or any similar statute with respect to any relocation of its business or activities upon the expiration or termination of this Agreement. In consideration of the rights given the Railroads under this Agreement, each Railroad expressly waives any relocation assistance which such statutes or any future statutes may allow.

**15.22 Non-discrimination.** Each Railroad, Owner and ACTA agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, disability, sexual orientation, AIDS, HIV status, physical handicap or Vietnam era veteran status. All assignments and transfers of interest permitted hereunder in this Agreement under or pursuant to this Agreement shall contain this provision.

**15.23 Conflict of Interest.** It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City of Los Angeles or the City of Long Beach relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial or economic interest does exist at the inception of this Agreement, Owner may immediately terminate this Agreement without any liability therefor by giving written notice thereof.

**15.24 Further Assurances.** Each party shall execute all such instruments and documents and shall take in good faith all such actions as are reasonably necessary to carry out the provisions of this Agreement.

**15.25 Persons Authorized to Act.** The Executive Director of POLA and POLB, and the Chief Executive Officer or General Manager of ACTA, respectively, and all persons designated by the respective Executive Director or Chief Executive Officer or General Manager (as the case may be) of such entity to act on such entity's behalf, shall be entitled to exercise all rights and remedies of the respective entity hereunder, until a new person is designated by the respective Executive Director or Chief Executive Officer or General Manager (as the case may be).

**15.26 Approvals.** The parties hereto agree to cooperate diligently and in good faith to obtain all necessary consents or approvals with respect to this Agreement and the joint rail freight operations by the Railroads on the Rail Corridor.

**15.27 Conflicts.** To the extent that the provisions of this Agreement conflict with any other agreements between Owner and any Railroad with respect to the Rail Corridor and/or the Project, the provisions of this Agreement shall control, provided that nothing in this Agreement shall in any way limit Owner's obligation to construct (or cause the construction of) any connections, crossings or other facilities for which Owner is obligated pursuant to another agreement.

**[SIGNATURES ON NEXT 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.

**"BNSF"**

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: Jeffrey R. Moreland  
Its: Senior Vice President Law  
and Chief of Staff

Approved as to form this \_\_\_\_\_  
day of October, 1998.

By: \_\_\_\_\_  
Name: Dennis W. Wilson  
Its: Property and Transactions Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**"UP"**

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form this \_\_\_\_\_  
day of October, 1998.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**[SIGNATURES CONTINUED ON NEXT PAGE]**

**"POLB"**

**CITY OF LONG BEACH,**  
and through its  
Board of Harbor Commissioners

By: \_\_\_\_\_  
Richard D. Steinke  
Executive Director  
Long Beach Harbor Department

Approved as to form this \_\_\_\_\_ acting by  
day of October, 1998.

ROBERT E. SHANNON, City Attorney

By: \_\_\_\_\_  
Richard L. Landes,  
Principal Deputy City Attorney

**"POLA"**

**CITY OF LOS ANGELES,**  
acting by and through the  
Board of Harbor Commissioners  
of the Port of Los Angeles

By: \_\_\_\_\_  
Larry A. Keller  
Executive Director  
Los Angeles Harbor Department

ATTEST:

By: \_\_\_\_\_  
Commission Secretary  
Los Angeles Harbor Dept.

Approved as to form this \_\_\_\_\_  
day of October, 1998.

JAMES K. HAHN, City Attorney

By: \_\_\_\_\_  
Winston F. Tyler  
Senior Assistant City Attorney

**[SIGNATURES CONTINUED ON NEXT PAGE]**



**“ACTA”**

**ALAMEDA CORRIDOR TRANSPORTATION  
AUTHORITY, a Joint Powers Authority**

By: \_\_\_\_\_  
James C. Hankla  
Chief Executive Officer

ATTEST:

By: \_\_\_\_\_  
Joseph Burton  
General Counsel  
Date: October \_\_, 1998

**EXHIBIT A**

**MAP**

[Map is Attached Hereto]

## **EXHIBIT A-1**

### **PROJECTS THAT MAY NOT BE COMPLETED AT TIME OF SUBSTANTIAL COMPLETION OF MAINLINE TRACKS**

1. ACTA projects that could affect ultimate train speeds (from north to south):
  - A. North end connection for UP across Soto Street Bridge - two tracks (one on existing bridge and one on the new bridge), radius of curves will permit train speed of 15-20 MPH.
  - B. If UP does not provide, or delays in providing, access to property previously purchased by Owner for the portion of the Rail Corridor through Dolores Yard, "slow order" train orders may be in effect.
  - C. Curve around Industrial Asphalt (Thenard Tower) - two tracks around curve, radius of curve will permit train speed of approximately 15 MPH.
  - D. Long Beach Lead to Port of Long Beach (through and south of Texaco) - new two track bridge across Dominguez Channel completed with two tracks, radius of curve will permit train speed of approximately 15 MPH.
  - E. Henry Ford Avenue Grade Separation - one track at grade always in service; the two tracks on structure may not be ready, second at-grade track on east side of structure also available at all times.
2. Public Work Projects (ACTA not lead agency) that still may be under construction:
  - A. Del Amo Boulevard Grade Separation.
  - B. Sepulveda Boulevard Grade Separation.
  - C. Pacific Coast Highway Grade Separation.

## **EXHIBIT B**

### **JOINT USE CONSTRUCTION PROJECTS**

1. Construction of the North End Grade Separation.
2. Santa Fe Avenue/Washington Boulevard grade separation.
3. Construction of a three-track bridge over the Los Angeles River (UP Bridge).
4. Construction of multiple mainline tracks between Carson Street and Thenard Crossing.

**EXHIBIT C**

**TERMS GOVERNING USE OF CONNECTION TRACK IN MEAD YARD**

[Two Pages Attached Hereto]

## EXHIBIT D

### SCHEDULE OF AGREEMENTS TO BE TERMINATED OR MODIFIED

#### Agreements Affecting Property from J Yard to Thenard ("Q" Street)

1. Document No. P.E. 7053

Agreement dated January 1, 1917 between Pacific Electric Railway Company and Los Angeles & Salt Lake Railroad Company, as amended and supplemented

2. Document No. 1682

Agreement dated December 31, 1902 between Southern California Railway Company, Southern Pacific Railroad Company and Southern Pacific Company, as amended and supplemented (for interlocking plant at Slauson and Alameda)

#### Agreements Relating to the Thenard Area

3. Document No. 35959

Agreement dated June 6, 1932 between Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, City of Los Angeles, as amended and supplemented (Thenard)

4. Document No. 134937

Agreement dated June 17, 1970 between Southern Pacific Transportation Company, Los Angeles & Salt Lake Railroad Company, and Union Pacific Railroad Company, as amended and supplemented (continued maintenance of Thenard Crossing). This document supplements Document No. 35959 dated June 6, 1932.

5. Document No. 135058

Agreement dated September 14, 1971 between Southern Pacific Transportation Company, Los Angeles & Salt Lake Railroad Company, and Union Pacific Railroad Company, as amended and supplemented (granting UP joint bridge rights over the Long Beach Wye)

#### Agreements Affecting the Long Beach Area

6. Document No. 71387

Agreement Relating to Use by BNSF of Portions of Lines of Southern Pacific and Pacific Electric in Serving the City of Long Beach, and Performance by Pacific Electric of



Switching Service for BNSF in Long Beach dated October 10, 1945 between Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, The Atchison, Topeka and Santa Fe Railway Company, as amended and supplemented

7. Document No. 36245

Agreement dated March 24, 1934 between Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, and Los Angeles & Salt Lake Railroad Company, as amended and supplemented (UP Basic Agreement)

Document No. 146296

Agreement dated January 25, 1979 between Southern Pacific Transportation Company and Los Angeles & Salt Lake Railroad Company, as amended and supplemented.

Agreements Relating to the J-Yard Area

Audit No. 53772

Agreement dated March 7, 1942, between Union Pacific and Southern Pacific, covering East Bank operations.

Audit No. 4941

Agreement dated September 16, 1924, between Union Pacific and BNSF, covering crossing gates at Santa Fe Avenue and Butte Street.

Audit No. 58103

Agreement dated April 8, 1943, between Union Pacific and Southern Pacific, covering use by SPT of UP trackage from 9th St. Jct. and Bridge Jct. to Fruitland Avenue.

Audit No. 732

Agreement dated March 12, 1906, between Union Pacific and Southern Pacific, covering Violet Alley trackage.

Audit No. 117917

Agreement dated September 27, 1971, between Union Pacific and Southern Pacific, covering connection to Violet Alley trackage.

Audit No. 6741

Agreement dated June 15, 1928 between Union Pacific and Southern Pacific, covering trackage from Butte St. to 8th St. Terminal.

Audit No. 6518

Agreement dated June 17, 1927, between Union Pacific and BNSF, covering Hobart Interlocker.

Audit No. 7384

Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering sale of land and trackage between Hobart and J-Yard and between Thenard Jct. and entrance to Brighton Beach Yard.

Audit No. 166458

Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering UP trackage rights on trackage between Hobart and J-Yard.

Agreements Affecting the Long Beach Area

Audit No. 9232

Agreement dated March 24, 1934, between Union Pacific, Southern Pacific and City of Long Beach, covering operation of municipal tracks in the City of Long Beach.

Audit No. 69519

Agreement dated February 1, 1948, between Union Pacific and Southern Pacific, covering switching by SPT of UP cars at Long Beach.

Audit No. 128752

Agreement dated January 25, 1979, between Union Pacific and Southern Pacific, covering additional connection and operating rights granted to UP for operation of unit trains to and from Port of Long Beach.

Audit No. 166460

Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering UP trackage rights on trackage between Thenard Jct. and the entrance to Brighton Beach Yard.

## **EXHIBIT E**

### **SCHEDULE OF AGREEMENTS NOT SUBJECT TO REVISION**

- UP:      UP C&M Agreement  
          Drill Track Operating Agreement  
          Interim Operating Agreement  
          Easement Agreement Regarding 8th Street Yard
- Agreement dated December 24, 1992, between City of Los Angeles, City of Long Beach and Union Pacific, covering improvements within City of Long Beach.
- UP San Pedro Branch Operating Agreement dated December 22, 1994, between City of Los Angeles, City of Long Beach and Union Pacific, covering UP San Pedro Branch.
- BNSF:    Agreement dated January 15, 1906, between Union Pacific and BNSF, covering Redondo Interlocker.
- ATSF Purchase Agreement  
          BNSF C&M Agreement
- Joint:    Port Rail Agreements

## **EXHIBIT F**

### **FEEES FOR DETOUR RIGHTS UNDER SECTION 2.4(b)(ii)**

1. For the first 90 days, \$9.00 per train mile escalated from the date hereof in accordance with the RCAF (without any cap);
2. For the next 90 days, (a) \$1,660.00 per day, plus (b) \$9.00 per train mile with both figures escalated from the date hereof in accordance with the RCAF (without any cap);
3. For the next 180 days, (a) \$3,332.00 per day, plus (b) \$9.00 per train mile, with both figures escalated from the date hereof in accordance with the RCAF (without any cap); and
4. Thereafter, (a) \$6,664.00 per day, plus (b) \$9.00 per train mile, with both figures escalated from the date hereof in accordance with the RCAF (without any cap).

**EXHIBIT C**

**AMENDED AND RESTATED  
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**by**

**and**

**among**

**THE CITY OF LOS ANGELES,  
ACTING BY AND THROUGH  
THE BOARD OF HARBOR COMMISSIONERS  
OF THE PORT OF LOS ANGELES**

**and**

**THE CITY OF LONG BEACH,  
ACTING BY AND THROUGH ITS  
BOARD OF HARBOR COMMISSIONERS**

**(collectively "Owner"),**

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**

**("ACTA"),**

**and**

**UNION PACIFIC RAILROAD COMPANY  
(successor to SOUTHERN PACIFIC TRANSPORTATION COMPANY)**

**("Union Pacific")**

**Dated as of October \_\_, 1998**

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**AMENDED AND RESTATED  
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**THIS AMENDED AND RESTATED CONSTRUCTION AND MAINTENANCE AGREEMENT** (this "**Agreement**"), dated as of October \_\_\_, 1998, is by and among (i) **THE CITY OF LOS ANGELES**, a municipal corporation, acting by and through **THE BOARD OF HARBOR COMMISSIONERS OF THE PORT OF LOS ANGELES** ("**POLA**"), and **THE CITY OF LONG BEACH**, a municipal corporation, acting by and through its **BOARD OF HARBOR COMMISSIONERS** ("**POLB**") (for convenience, **POLA** and **POLB** are sometimes collectively referred to herein as the "**Owner**"), (ii) **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority created under the laws of the State of California ("**ACTA**"), and (iii) **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (successor to **SOUTHERN PACIFIC TRANSPORTATION COMPANY**) ("**Union Pacific**"), with reference to the following Recitals:

**ARTICLE 1**

**RECITALS**

1.1 Pursuant to that certain Purchase and Sale Agreement dated December 22, 1994 (the "**Purchase Agreement**"), by and between **Southern Pacific Transportation Company**, a Delaware corporation ("**Old SPT**") and Owner, Owner purchased from Old SPT certain real property, easements, franchises, improvements and fixtures, portions of which presently are used by Union Pacific in connection with the operation of Union Pacific's freight rail services between the Ports (as hereinafter defined) and the East Bank of the Los Angeles River, all as more particularly described in the Purchase Agreement. The real property, easements, franchises, improvements and fixtures acquired by Owner pursuant to the Purchase Agreement are hereinafter collectively referred to as the "**Property**." Subsequent to Owner's purchase of the Property from Old SPT, Old SPT merged with **Union Pacific Railroad Company**, a Utah corporation ("**Old UP**"), and the surviving entity is Union Pacific.

1.2 As more particularly described in the Recitals to the Purchase Agreement, Owner acquired the Property for the purpose of constructing over a port on thereof (at the cost of parties other than Union Pacific, except as set forth in this Agreement or any other agreement to which Union Pacific is a party (including by reason of Union Pacific being the successor to Old SPT) a public project which is intended to improve the operations of and transportation to and from the Ports and the rail and highway routes to and from the Ports over which Port-related international traffic is transported. It presently is anticipated that such project will consist of (i) a multiple main, high density, centralized traffic controlled mainline railroad system, a portion of which will be constructed in a depressed (below existing grade) configuration or design and the remainder at grade with appropriate crossing facilities, which railroad system will connect the Ports with the East Bank of the Los Angeles River and run generally along and parallel to Alameda Street (the "**Rail Corridor**"), (ii) a single-track rail line running generally adjacent to parts of the Rail Corridor (as more particularly described in Section 2.14 hereof, the "**Drill Track**"), and (iii) public highway and other improvements to and around Alameda Street (the "**Public Improvements**"). The construction of the Rail Corridor, the Drill Track and the Public Improvements, and all work incidental thereto, is sometimes hereinafter referred to as the "**Project**."

1.3 Upon Corridor Substantial Completion (as hereinafter defined) of the Rail Corridor, except as otherwise provided in the Corridor Operating Agreement (as hereinafter defined), Union Pacific and **The Burlington Northern and Santa Fe Railway Company** (formerly known as The Atchison, Topeka and Santa Fe Railway Company), a Delaware corporation ("**BNSF**") (Union Pacific and BNSF are sometimes collectively referred to herein as the "**Railroads**"), their permitted assigns and, under certain circumstances, other railroads, may use the Rail Corridor for Overhead Freight Service (as hereinafter defined) to and from the Ports pursuant to the Corridor Operating Agreement.

1.4 Construction of the Project will include many sub-projects, including, by way of example only (and nothing herein shall be deemed or construed to require that any of the following items be undertaken or constructed), (i) the removal of certain buildings; (ii) the modification or relocation of utilities and related facilities owned by Union Pacific and others; (iii) track removal and temporary track replacement; (iv) changes to or relocations of

communications, signals, electrical lines and appurtenances, bridge structures, temporary and detour trackage; (v) construction of bridges, overpasses, underpasses and other grade separation projects; (vi) construction of the Santa Ana Bypass Track, the Wilmington Branch Improvements and the Replacement Storage Tracks (as such terms are hereinafter defined), and (vii) all other work of every kind or character necessary to complete the construction of the Project in accordance with the provisions of this Agreement.

1.5 Portions of the Property currently are used by Union Pacific for Overhead Freight Service between the Ports and the East Bank of the Los Angeles River and the Intermediate Destination Points (as hereinafter defined), and for Local Freight Service (as hereinafter defined) to and from local industry customers. Further, (i) during construction of the Project, and subject to the terms, conditions and limitations of this Agreement (including the provisions hereof providing for phased construction, Designated Construction Periods (as hereinafter defined) and the shifting of rail operations north of the Compton Creek Bridge (as hereinafter defined) to the Santa Ana Bypass Track), and the provisions of the Interim Operating Agreement (as hereinafter defined), Union Pacific intends to continue to use portions of the Property for its freight rail service to and from the Ports and the Intermediate Destination Points and to perform its common carrier responsibilities and obligations under the Interstate Commerce Act, (ii) Union Pacific has other rail lines in the vicinity of the Property which Union Pacific also uses, or could use, for freight rail service to and from the Ports, which rail lines will enable Union Pacific to re-route certain freight rail service from portions of the Property during construction of the Project in the manner provided in this Agreement (provided that Union Pacific's Wilmington Branch is the only rail line that Union Pacific intends, or will be required, to use to conduct freight rail service to and from the ICTF (including traffic to and from the Ports that consolidates with ICTF traffic), or for Union Pacific's Dolores Hauler and oil trains), and (iii) the completion of the Santa Ana Bypass Track, the Replacement Storage Tracks and the Wilmington Branch Improvements will mitigate the effects of constructing portions of the Project north of the Compton Creek Bridge, thereby enabling Union Pacific to shift Overhead Freight Service and Local Freight Service north of the Compton Creek Bridge to the Santa Ana Bypass Track (and after such shift, Owner or ACTA may remove any tracks currently existing on the Property that are not part of the Santa Ana Bypass Track, as more particularly set forth in this Agreement).

1.6 As more particularly described in this Agreement, after Corridor Substantial Completion, Union Pacific may elect to continue using the Santa Ana Bypass Track (or portions thereof) to provide Local Freight Service, on the terms and conditions set forth in this Agreement. In such event, the Santa Ana Bypass Track (or the portions thereof which Union Pacific elects to use), together with the Northerly Drill Track and the Southerly Drill Track (as such terms are hereinafter defined), shall be deemed to be the Drill Track. The Drill Track will be used exclusively by Union Pacific pursuant to the terms and provisions of the Drill Track Operating Agreement (as hereinafter defined), subject to such detour rights as BNSF and other railroads (if any) using the Rail Corridor (or any portion thereof) may have under the terms of the Corridor Operating Agreement.

1.7 Concurrently with Owner's acquisition of the Property from Old SPT, Owner and Old SPT entered into that certain Construction and Maintenance Agreement for the Rail Corridor and the Drill Track dated as of December 22, 1994 (the "**C&M Agreement**"), pursuant to which Owner and Old SPT set forth their agreements and understandings regarding construction of the Project.

1.8 Concurrently herewith, Owner and ACTA are entering into a Use Permit covering the property comprising the Rail Corridor which, among other things, allows ACTA to construct the Project on such property and delegates to ACTA the duties and obligations to construct the Rail Corridor.

1.9 Owner, ACTA and Union Pacific now desire to modify and restate the C&M Agreement to reflect certain modifications to and clarifications of the provisions contained therein, and to include ACTA as a party thereto, all as more particularly set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby amend and restate the C&M Agreement in its entirety, as follows:



**ARTICLE 2**  
**DEFINITIONS**

The following capitalized terms are used in this Agreement with the following meanings:

**2.1 "ACTA's Construction Contribution"** means the amount necessary to reimburse Union Pacific for the cost of constructing the Union Pacific Construction Projects, which amount will not exceed \$7,750,000 (as adjusted pursuant to the next sentence). ACTA's Construction Contribution, or the undisbursed balance thereof, shall be adjusted by the percentage adjustment in the Producer Price Index for all commodities (1982=100), prepared by the United States Bureau of Labor Statistics, from December 22, 1994 until the date that is one year after the Notice to Proceed is given (subject to the provisions and limitations of Section 3.4(d) below).

**2.2 "Additional Land"** has the meaning set forth in Section 3.2(b) hereof.

**2.3 "Agreement"** means this Amended and Restated Construction and Maintenance Agreement.

**2.4 "BNSF"** has the meaning set forth in Section 1.3 hereof.

**2.5 "Compton Creek Bridge"** means the existing Compton Creek railroad structure that is located beneath the State Route 91 overpass.

**2.6 "Conceptual Design Layout"** means the Conceptual Design Layout Alternative 2.1B, as approved by the governing board of ACTA on January 13, 1993, as supplemented, modified and/or updated by certain drawings dated December 5, 1994 initialed by BNSF, Old SPT, Old UP and Owner, and as further updated and, to the extent shown thereon, superseded, by the track schematic drawings attached to this Agreement as Exhibit A. The parties acknowledge that the Conceptual Design Layout is in the process of being modified and updated. The modifications and updates to the Conceptual Design Layout shall be subject to review and approval of Union Pacific, which approval shall not be unreasonably withheld (and it shall not be reasonable to disapprove any modifications or updates to the Conceptual Design Layout that are consistent with the track schematic drawings attached to this Agreement as

Exhibit A). Union Pacific shall provide ACTA any comments, suggestions or disapprovals regarding modifications and updates to the Conceptual Design Layout within 21 days after Union Pacific's receipt thereof (and Union Pacific's failure to deliver comments, suggestions or disapprovals within such 21-day period shall be deemed Union Pacific's approval thereof). Upon completion of the modifications and updates, the Railroads, Owner and ACTA shall initial a complete, integrated set of the drawings comprising the Conceptual Design Layout, and such initialled set of drawings thereafter shall be the Conceptual Design Layout for all purposes under this Agreement and the Corridor Operating Agreement. To the extent there is any conflict between the depiction of the Project shown on the Conceptual Design Layout and the description of the Project set forth in this Agreement, the Conceptual Design Layout shall control.

**2.7 "Corridor Operating Agreement"** means that certain Use and Operating Agreement to be entered into by and among Owner, ACTA and the Railroads, as described in Section 11.21 hereof.

**2.8 "Corridor Substantial Completion"** means the earlier of (i) completion of construction of the Rail Corridor to such an extent that there is sufficient capacity to permit the Railroads to operate Overhead Freight Service on an efficient basis between the Ports and the northerly limits of the Rail Corridor at then current and reasonably anticipated volumes of traffic at the train speeds shown on the track schematic drawings, except (x) as described on Exhibit A-1 attached hereto (and the parties hereto acknowledge that if construction of the Rail Corridor otherwise has been completed in accordance with this clause (i), the fact that one or more of the projects described on Exhibit A-1 are not then complete shall not preclude Corridor Substantial Completion from being deemed to have occurred), and (y) the fact that local switching activities may be conducted on the mainline tracks of the Rail Corridor at the Permitted Switching Locations (as defined in the Corridor Operating Agreement) shall not be taken into account for purposes of this clause (i); or (ii) such earlier date, if any, on which all of the parties to the Corridor Operating Agreement agree that the Railroads will commence joint rail operations of through trains between 25th Street and West Thenard (as shown on the map attached hereto as Exhibit B).

**2.9 "Designated Construction Period"** means (i) for a construction period not to exceed six months with respect to the segment between Firestone Boulevard and the 91 Freeway, a period of 12 consecutive hours during each day, generally between the hours of 6:00 a.m. and 6:00 p.m., (ii) for other designated segments of the Project, a period of eight consecutive hours during each day, generally to occur between the hours of 6:00 a.m. and 6:00 p.m., as agreed upon by ACTA and Union Pacific, or (iii) such other designated period(s) as may be mutually agreed upon by ACTA and Union Pacific (acting reasonably and in good faith) for specific segments of the Project, taking into account Union Pacific's need to transport time-sensitive freight over such segment of the Rail Corridor (with the understanding that the schedules for such time-sensitive freight may be adjusted in order to establish a Designated Construction Period for a particular segment). During a Designated Construction Period, ACTA may conduct construction activities on the designated segment of the Project, and during such period Union Pacific shall not operate or provide any freight rail service (including Local Freight Service to local industry customers) in the immediate areas of such construction activities (which areas shall be designated by ACTA by appropriate mile post references).

**2.10 "Designated Representative"** means the persons designated pursuant to Section 11.2 hereof.

**2.11 "Dolores Yard"** means that certain rail yard commonly known as Dolores Yard in the City of Carson and shown on the map attached hereto as Exhibit B.

**2.12 "Dolores Yard Tail Track"** means a lead track, approximately 5,000 feet in length, that will connect the Rail Corridor on the south side of the Corrao Creek Bridge to a point intersecting Union Pacific's future Dolores Yard ladder tracks, as shown on the Conceptual Design Layout.

**2.13 "Dominguez Junction"** means that certain rail line junction of Union Pacific's San Pedro and Wilmington Branches in the location shown on the map attached hereto as Exhibit B.

**2.14 "Drill Track"** means, collectively, the Northerly Drill Track, the Southerly Drill Track and, if Union Pacific so elects pursuant to Section 3.6 hereof, the Santa

Ana Bypass Track (or such portions thereof as Union Pacific elects to continue using pursuant to said section), and the support structures therefor and the crossings related thereto.

**2.15 “Drill Track Operating Agreement”** means that certain Drill Track Operating Agreement to be entered into by and between Owner and Union Pacific as described in Section 11.22 hereof.

**2.16 “ICTF”** means that certain Intermodal Container Transfer Facility in the County of Los Angeles and shown on the map attached hereto as Exhibit B.

**2.17 “Interim Operating Agreement”** means that certain Interim Operating Agreement dated as of December 22, 1994, by and between Old SPT and Owner.

**2.18 “Intermediate Destination Points”** means the ICTF, Dolores Yard, J Yard and Pier B Yard.

**2.19 “J Yard”** means that certain rail yard commonly known as J Yard in the City of Los Angeles and shown on the map attached hereto as Exhibit B.

**2.20 “Local Freight Service”** means freight rail service to customers whose point of tender to or receipt from Union Pacific is accessed directly or indirectly from a rail connection within the boundary lines of the Property.

**2.21** [Intentionally Omitted].

**2.22 “Neutral Arbitrator”** has the meaning set forth in Section 9.1(a) hereof.

**2.23 “Northerly Drill Track”** means that certain single-track rail line, approximately 2,000 feet in length, that will be located generally between J Yard and 38<sup>th</sup> Street, and the spur tracks and industrial leads connected thereto, as shown on the Conceptual Design Layout.

**2.24 “Notice to Proceed”** means a written notice delivered by ACTA to the general contractor or the design-build contractor (as applicable) for the Rail Corridor, notifying such entity that it may proceed with construction of the Santa Ana Bypass Track, the

Replacement Storage Tracks and the portion of the Rail Corridor north of the Compton Creek Bridge.

**2.25** “**Old SPT**” has the meaning set forth in Section 1.1 hereof.

**2.26** “**Old UP**” has the meaning set forth in Section 1.1 hereof.

**2.27** “**Overhead Freight Service**” means freight rail service, the commencement and termination of which both are beyond the boundary lines of the Property or a particular segment of the Rail Corridor (as the case may be) and which is not Local Freight Service.

**2.28** “**Owner Indemnified Parties**” has the meaning set forth in Section 3.1(b) hereof.

**2.29** “**Pier B Yard**” means that certain rail yard commonly known as Pier B Yard (formerly known as 8<sup>th</sup> Street Yard) in the City of Long Beach and shown on the map attached hereto as Exhibit E.

**2.30** “**Plans**” have the meaning set forth in Section 3.3(a) hereof.

**2.31** “**POLB Note**” has the meaning set forth in Article 5 hereof.

**2.32** “**Ports**” means, collectively, those certain seaports located in Los Angeles County, California and commonly known as the Port of Long Beach and the Port of Los Angeles.

**2.33** “**Project**” has the meaning set forth in Section 1.2 hereof.

**2.34** “**Property**” has the meaning set forth in Section 1.1 hereof.

**2.35** “**Public Improvements**” has the meaning set forth in Section 1.2 hereof.

**2.36** “**Purchase Agreement**” has the meaning set forth in Section 1.1 hereof.

**2.37** “**Rail Corridor**” has the meaning set forth in Section 1.2 hereof.

**2.38** “**Railroads**” has the meaning set forth in Section 1.3 hereof.

**2.39** “**Railroad Consultant**” has the meaning set forth in Section 3.3(a) hereof.

**2.40** “**Replacement Storage Tracks**” means replacement storage tracks to be constructed in three locations between Sepulveda Boulevard and the Compton Creek Bridge as replacement for existing storage tracks located in Union Pacific’s Olson Yard, Tweedy Yard and K Yard. A portion of the Replacement Storage Tracks will be constructed by ACTA on the Property, and other portions of the Replacement Storage Tracks (including a three-track bridge across Dominguez Channel to support such tracks) will be constructed by ACTA at locations on property Union Pacific owns or over which Union Pacific has or acquires rights, as agreed upon by ACTA and Union Pacific (and Union Pacific shall provide ACTA and its contractors with such access rights to Union Pacific’s property as necessary to enable ACTA to construct portions of the Replacement Storage Tracks thereon in accordance with ACTA’s construction schedule). Upon completion of the Replacement Storage Tracks, the Interim Operating Agreement shall govern the use, operation and maintenance of any portion of the Replacement Storage Tracks located on the Property (and such portion of the Replacement Storage Tracks shall be included in the definition of “Trackage” set forth in such Agreement).

**2.41** “**Santa Ana Bypass Track**” means a single track to be constructed by ACTA from the north side of the Compton Creek Bridge to Union Pacific’s Santa Ana Branch (including the connections to Union Pacific’s Santa Ana Branch and connections to existing industry customers currently served from the Property between the Compton Creek Bridge and the Santa Ana Branch), as shown on the Conceptual Design Layout. The Santa Ana Bypass Track will be used by Union Pacific to conduct its Overhead Freight Service and Local Freight Service during construction of the portion of the Rail Corridor north of the Compton Creek Bridge. Until such time as Union Pacific elects (or is deemed to elect) pursuant to Section 3.6 hereof to use all or a portion of the Santa Ana Bypass Track as a portion of the Drill Track, the Interim Operating Agreement shall govern the use, operation and maintenance of the Santa Ana Bypass Track (and the Santa Ana Bypass Track shall be deemed included in the definition of “Trackage” set forth in such agreement), except that from and after Corridor Substantial

Completion, Union Pacific shall be responsible for the maintenance of any crossing protection relating to the Santa Ana Bypass Track. Thereafter, if Union Pacific elects (or is deemed to elect) pursuant to Section 3.6 hereof to use all or a portion of the Santa Ana Bypass Track as a portion of the Drill Track, use and operation of the Santa Ana Bypass Track (or such portion thereof) shall be governed by the Drill Track Operating Agreement.

**2.42 "Southerly Drill Track"** means that certain single-track rail line, approximately 10,500 feet in length, that will be located generally between Dominguez Street and Sepulveda Boulevard, and the spur tracks and industrial leads connected thereto, as shown on the Conceptual Design Layout.

**2.43 "Union Pacific Construction Projects"** means those certain improvements described in Exhibit C attached hereto.

**2.44 "Wilmington Branch Contribution"** means the amount necessary to reimburse Union Pacific for constructing the Wilmington Branch Improvements, which amount is estimated to be \$6,000,000.

**2.45 "Wilmington Branch Improvements"** means the improvements to the track and signal systems on Union Pacific's Wilmington Branch as described in a letter dated September 29, 1998 from Ron McCoy of Union Pacific to Dave Boger of ACTA (and in the diagram and attachments to such letter).

### **ARTICLE 3**

#### **DESIGN AND CONSTRUCTION OF THE PROJECT**

##### **3.1 General Design.**

###### **(a) General Design of Rail Corridor.**

(i) Subject to the provisions of this Agreement, the Rail Corridor portion of the Project shall be a multiple main, high density, centralized traffic controlled mainline rail system designed in a manner that will:



(A) provide the Railroads (and any other railroad which will use the Rail Corridor pursuant to the Corridor Operating Agreement) a direct rail route with sufficient capacity to enable such Railroads to conduct Overhead Freight Service between the Ports and the East Bank of the Los Angeles River (and the Intermediate Destination Points) at then-current and reasonably anticipated volumes of traffic;

(B) provide Union Pacific with rail connections (including the necessary turnouts and switches from the Rail Corridor) to the Rail Corridor at or in the vicinity of (i) J Yard to the J Yard connection tracks and to the Santa Monica/Wilmington Branch, (ii) Downey Road to the UP mainline and Bridge Junction to the Los Angeles River East Bank, (iii) the Wilmington Branch and San Pedro Branch at Dominguez Junction and Thenard Junction, respectively, (iv) the north and south end of Dolores Yard in the vicinity of Compton Creek and Sepulveda Boulevard, respectively, (v) Dolores Yard in the vicinity of 223rd Street, and (vi) the Pier B Yard, all as shown on the Conceptual Design Layout (and Union Pacific shall be solely responsible for the construction and, except as provided in Section 3.4(d) below, the costs thereof, of all necessary facilities, improvements and connections in connection therewith on Union Pacific's property);

(C) provide Union Pacific with a crossing (in the location shown on the Conceptual Design Layout) providing Union Pacific the ability to cross the Rail Corridor from Union Pacific's Wilmington Branch to the ICTF/Dolores Yard connection tracks at Dominguez Junction (and Union Pacific shall be solely responsible for the construction and, except as provided in Section 3.4(d) below, the cost thereof, of all necessary facilities, improvements, and connections in connection therewith on Union Pacific's property);

(D) provide Union Pacific with a rail connection (including the necessary turnouts and switches from the Rail Corridor) to the Drill Track at the south end of J Yard, as shown on the Conceptual Design Layout, together with connections between the Rail Corridor and the drill track located in the vicinity of Dominguez Street, 223rd Street, and a location just north of the Dominguez Channel (all as shown on the Conceptual Design Layout);

(E) provide Union Pacific a rail connection (including the necessary turnout and switch from the Rail Corridor) to serve the Texaco site located to the north

of Union Pacific's Long Beach Branch and the industry lead north of Del Amo Boulevard, and also to serve industries located just west of Santa Fe Avenue, all as shown on the Conceptual Design Layout;

(F) provide Union Pacific continued access to the wye at the intersection of the San Pedro and Long Beach branches unless a wye at the connection to BNSF's Watson Yard is made available for Union Pacific's use substantially in accordance with the provisions of the Use of Tracks Agreement among Old SPT, BNSF, POLA and POLE attached hereto as Exhibit G;

(G) include crossovers at locations reasonably acceptable to Union Pacific, Owner and ACTA to provide efficient access to and from Union Pacific's tracks and facilities along the Rail Corridor; and

(H) include a rail-to-rail grade separation of the La Habra Branch over the Rail Corridor (and, prior to constructing this grade separation, ACTA shall construct a temporary shoo-fly to maintain Union Pacific's continued rail operations on the La Habra Branch during construction of such grade separation).

(I) In addition to the foregoing, (i) as part of the Project, ACTA shall relocate the existing track serving City Fibers, Inc., and Union Pacific shall install the connections for such track (and ACTA shall reimburse Union Pacific, in the manner set forth in Section 11.4, for Union Pacific's actual costs and expenses incurred in installing such connections, which reimbursement shall be based on invoices presented by Union Pacific to ACTA setting forth with reasonable specificity the work undertaken by Union Pacific), and (ii) if as a result of ACTA's construction of the Project it is necessary for Union Pacific to reconfigure the track and track connections in the north end of the portion of J Yard owned by Union Pacific, then ACTA shall reimburse Union Pacific (in the manner set forth in Section 11.4) for Union Pacific's actual costs and expenses incurred in connection with such work, provided that such work by Union Pacific is completed within one year after Corridor Substantial Completion. Such reimbursement by ACTA shall be based on invoices presented by Union Pacific to ACTA, setting forth with reasonable specificity the work undertaken by Union Pacific in the north end of the portion of J Yard owned by Union Pacific as a result of ACTA's construction of the Project.

ACTA shall have the right to audit such invoices and inspect Union Pacific's improvements to confirm that such improvements have been completed. Union Pacific acknowledges and agrees that any reconfiguration of track and track connections undertaken by Union Pacific in the south end of the portion of J Yard owned by Union Pacific is a Union Pacific Construction Project, and, therefore, the costs and expenses incurred by Union Pacific in connection therewith shall be included in ACTA's Construction Contribution and paid in accordance with Section 3.4(d) below.

The Conceptual Design Layout incorporates the foregoing design requirements.

(ii) Except for the connections of the Rail Corridor to the Wilmington Branch at Dominguez Junction and J Yard and the connection of the Rail Corridor to the San Pedro Branch near Thenard Junction, and on the condition that the Project includes the grade-separated crossing of the La Habra Branch over the Rail Corridor (but without any obligation of Owner or ACTA to provide a connection between the La Habra Branch and the Drill Track), no branch rail line currently crossing or ending at the Property (including, without limitation, Union Pacific's Santa Ana Branch and La Habra Branch at Randolph Street and BNSF's Harbor Subdivision at Slauson Avenue) will be connected to the Rail Corridor tracks.

(iii) The Rail Corridor will not be designed to permit, and the Corridor Operating Agreement shall prohibit, local switching operations from or on the Rail Corridor main line tracks, except for Union Pacific's Local Freight Service serving the two drill tracks at the locations specified in Section 3.1(a)(i)(D) above (provided that trains performing any such Local Freight Service pull or push entirely clear of the Rail Corridor main line tracks), and also except for local switching operations at the Permitted Switching Locations described in the Corridor Operating Agreement on the terms and conditions described in the Corridor Operating Agreement. The Corridor Operating Agreement will prohibit the Railroads from leaving, storing or holding any rail cars on the Rail Corridor main line tracks, and the Corridor Operating Agreement will provide that all trains providing Local Freight Service which may be permitted to use the Rail Corridor pursuant to the Corridor Operating Agreement shall be of lower priority than trains using the Rail Corridor for Overhead Freight Service and that such

trains providing Local Freight Service shall be subject to the dispatch control of the Rail Corridor dispatcher.

**(b) Design and Construction of Drill Track.**

(i) ACTA will construct the Drill Track (subject to the reimbursement provisions set forth in Section 3.6) in accordance with the Conceptual Design Layout. The parties acknowledge that ACTA (rather than Union Pacific) is constructing the Drill Track as an accommodation to (and in accordance with a design approved by) Union Pacific, and for purposes of efficiency during construction of the Project.

(ii) Union Pacific shall retain and perform all common carrier obligations to provide freight rail service to customers served from the Property, and neither Owner nor ACTA shall have, and neither Owner nor ACTA are assuming, any such obligations (including any obligation to determine that the Drill Track is sufficient to enable Union Pacific to serve its local industry customers, and neither Owner nor ACTA shall be deemed or construed as having rendered any advice to Union Pacific with respect to such matter). Without limiting the foregoing, other than as shown on the Conceptual Design Layout, there shall be no drill tracks constructed on the Property, and neither Owner nor ACTA shall have any obligation to connect or reconnect any customers to the Drill Track, nor shall Owner or ACTA be liable for any disconnection of any customer which results from ACTA's construction of the Rail Corridor and/or the Drill Track and the removal of any track previously used to service a local industry customer, except for any costs incurred by Union Pacific as a result of ACTA's failure to comply in all material respects with the provisions of this Agreement (including, without limitation, constructing the Rail Corridor and the Drill Track in accordance with the Conceptual Design Layout and phasing and schedules developed in cooperation with Union Pacific, which gives Union Pacific and its customers adequate advance notice of disconnection of such customers' tracks).

(iii) Union Pacific shall indemnify, defend and hold ACTA, the City of Los Angeles, the Port of Los Angeles and its Board of Harbor Commissioners, the City of Long Beach, the Port of Long Beach and its Board of Harbor Commissioners, and each of them (and their respective officers, directors, employees, agents, consultants, contractors,

successors and assigns) (collectively, the "**Owner Indemnified Parties**") harmless from and against any and all claims, actions, penalties, liabilities, losses, demands, damages, detriments, judgments, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by or brought against any of the Owner Indemnified Parties as a result of any disconnection of a customer as a result of the construction of the Rail Corridor and the Drill Track, the inability of any customer to receive freight rail service during or after construction of the Rail Corridor and/or the Drill Track, or any failure of Union Pacific to perform its common carrier obligations, except to the extent that such claims, actions, penalties, liabilities, losses, demands, damages, detriments, judgments, costs, charges and expenses result from the failure of ACTA to comply in all material respects with the provisions of this Agreement (including, without limitation, constructing the Rail Corridor and the Drill Track in accordance with the Conceptual Design Layout and phasing and schedules developed in cooperation with Union Pacific, which gives Union Pacific and its customers adequate advance notice of disconnection of such customer's tracks).

(iv) Pursuant to the provisions of the Corridor Operating Agreement and the Drill Track Operating Agreement, trains providing Overhead Freight Service on the Rail Corridor shall have priority over trains providing Local Freight Service which are operating on or crossing the Rail Corridor, including Union Pacific's Local Freight Service serving the locations specified in Section 3.1(a)(iii)(A) above.

(c) **Design and Construction Process.** As between Union Pacific and ACTA, ACTA shall have the sole right to decide whether the Rail Corridor will be constructed using a design/build or a design/bid/build process.

### **3.2 Minor Boundary Adjustments.**

(a) **Alignment of Rail Corridor and Drill Track.** The parties presently contemplate that the Rail Corridor shall be generally aligned within the boundary lines of the Property as shown on the Property Maps (as defined in the Purchase Agreement). Notwithstanding the foregoing, as specific design of the Project progresses, engineering requirements, operating efficiencies, cost considerations and other matters may make it necessary or desirable to modify the alignment of the Rail Corridor and the Drill Track from that

which is presently contemplated. Accordingly, and subject to Section 1.1(i) of the Purchase Agreement, the parties desire to provide in this Section 3.2 a mechanism in which minor adjustments to the boundary lines of the Property may be made after the date hereof to take into account such matters.

**(b) Designation of Additional Land.** If, in designing the Project (including, without limitation, in designing the Project to accommodate the requests of Union Pacific), ACTA reasonably determines that additional property (or an interest therein) owned by Union Pacific will be necessary or desirable to construct the Project, or that such additional property (or interest therein) would substantially improve the operating efficiency or safety of the Project, ACTA may give Union Pacific written notice thereof identifying the additional property (or interest therein) so desired (the “**Additional Land**”), the proposed use of the Additional Land and a reasonably detailed explanation of ACTA’s reasons for desiring that Owner acquire the Additional Land. The Additional Land must be contiguous to the portion of the Property which is the subject of the boundary line adjustment, and the Additional Land may not exceed 10 feet in width, except that, in order to construct the portion of the Southerly Drill Track between Carson Street and 223rd Street as shown on the Conceptual Design Layout, more than 10 feet of Additional Land may be necessary and, therefore, the foregoing 10 foot limitation shall not apply. Promptly after receiving a request for Additional Land (but in any event within 30 days after such request), Union Pacific, Owner and ACTA shall meet and negotiate reasonably and in good faith with respect to the acquisition of the Additional Land by Owner. Such negotiations shall take into account (i) the reason the Additional Land is necessary (including whether it is to accommodate the requests of Union Pacific in designing the Project), (ii) the incremental savings in construction costs if the Additional Land is conveyed, (iii) the incremental increase in engineering and operating efficiency, design and safety if the Additional Land is conveyed, and (iv) the use of the Additional Land then being made by Union Pacific (or then specifically proposed to be made by Union Pacific in the near future), and whether Union Pacific’s then present or proposed use of such land (including any existing facilities or improvements located thereon) could be relocated without any material detriment to Union Pacific’s operation as then conducted (or specifically planned to be conducted in the near future). If, taking into account all such factors and any other factors reasonably agreed to by the parties, the benefits of constructing the Rail Corridor and Public Improvements with the inclusion of the

Additional Land outweigh the detriments to Union Pacific caused by the conveyance of the Additional Land, then Union Pacific shall convey the Additional Land to Owner. In this connection, either Union Pacific or Owner may identify portions of the Property then owned by Owner which could be conveyed to Union Pacific in exchange for the Additional Land, and Owner and Union Pacific will consider reasonably and in good faith the conveyance of such land to Union Pacific in exchange for the Additional Land. Owner, however, shall not be obligated to convey any portion of the Property to Union Pacific in exchange for the Additional Land. If Owner and Union Pacific (acting reasonably and in good faith) are not able to agree upon a land exchange (or if Union Pacific elects not to consummate such an exchange pursuant to Section 3.2(c) below) then, upon the conveyance of the Additional Land to Owner, Owner shall pay to Union Pacific the fair market value of the Additional Land (as mutually agreed upon by Union Pacific and Owner, acting reasonably and in good faith). If a land exchange is negotiated and one party receives land having a fair market value higher than the land which it conveys in exchange, such party shall pay the other party upon such conveyance a cash payment in an amount equal to the difference between the fair market value of the land received and the fair market value of the land conveyed (and, in connection therewith, the value of any of the Property conveyed to Union Pacific shall be calculated, based on the acreage to be conveyed by Owner, as a proportionate share of the entire purchase price paid by Owner to Union Pacific under the Purchase Agreement). If, within 30 days after Owner, ACTA and Union Pacific first meet to discuss the conveyance of the Additional Land, the parties are unable to agree upon whether such Additional Land shall be conveyed to Owner, or Owner and Union Pacific are unable to agree upon the consideration therefor, any party may submit the matter to arbitration pursuant to Article 9 below. Notwithstanding anything to the contrary set forth in this Section 3.2, Union Pacific shall convey to Owner, without the payment of additional consideration or the requirement for an exchange of property, the Additional Land needed to construct the portion of the Southerly Drill Track between Carson Street and 223rd Street.

**(c) Conveyance of Additional Land.** The conveyance of the Additional Land (and, if applicable, the exchange of the agreed-upon portion of the Property), shall occur within 30 days after Owner and Union Pacific have agreed upon the consideration therefor (and, if construction on such Additional Land is not commenced by ACTA within four years after the date of such conveyance, Union Pacific shall have the right, exercisable by delivering written



notice to Owner any time thereafter but prior to the commencement of construction thereon, to re-acquire such Additional Land in substantially the same condition as conveyed to Owner by paying to Owner cash in an amount equal to the amount Owner paid to Union Pacific for the conveyance of such Additional Land). Owner shall acquire the Additional Land on an "as is - where is" basis and shall assume all liability for environmental expenses associated therewith, provided that (i) Owner shall have the right to conduct such tests and investigations of the Additional Land as it deems necessary or prudent, (ii) Owner may reasonably extend the scheduled date of conveyance if necessary to complete such tests and investigations, and (iii) Owner may elect not to acquire such Additional Land and may terminate such conveyance if the results of such tests and investigations are not acceptable to Owner in its sole but good faith discretion. In addition, Owner shall pay for all title insurance, surveys and other expenses associated with acquiring the Additional Land. If a portion of the Property is conveyed to Union Pacific in exchange for the Additional Land, Union Pacific shall acquire such portion of the Property on an "as is - where is" basis and shall assume all liability for environmental expenses associated therewith, provided that (i) Union Pacific shall have the right to conduct such tests and investigations of the portion of the Property to be re-acquired as it deems necessary or prudent, (ii) Union Pacific may reasonably extend the scheduled date of conveyance if necessary to complete such tests and investigations, and (iii) Union Pacific may elect not to re-acquire such portion of the Property and may terminate such conveyance if the results of such tests and investigations are not acceptable to Union Pacific in its sole but good faith discretion (provided, however, that Union Pacific may not terminate such conveyance as a result of any condition existing on the date hereof or otherwise caused by Union Pacific). Union Pacific shall pay for all title insurance, surveys and other expenses associated with reacquiring such portion of the Property. Union Pacific's obligations under Sections 3.2(b) and 3.2(c) shall expire on the earliest of (x) for any specific portion(s) of the Property with respect to which contiguous Additional Land has been conveyed to Owner, on the date that such Additional Land is conveyed to Owner, (y) for any portion of the Property on which a portion of the Project has been constructed, on the date such portion is substantially complete (with respect to portions of Union Pacific's property which is contiguous to such portion of the Project), and (z) for the entire Property, on December 22, 2014.

(d) **Payment for Facilities.** If, in order for Owner or ACTA to use the Additional Land, facilities of Union Pacific (whether or not located on the Additional Land) will be removed or will be rendered physically or legally unusable, Owner shall pay (or reimburse Union Pacific for) all reasonable costs and expenses of any kind and nature incurred by Union Pacific in connection with such relocation so as to provide Union Pacific substitute facilities of a quality and utility substantially equal to those being relocated (except that, to the extent that the fair market value paid by Owner to Union Pacific for the Additional Land included an amount for such facilities of Union Pacific, Owner's obligation to pay or reimburse Union Pacific for any such relocation costs shall be reduced by the amount of such fair market value attributable to such facilities).

### **3.3 Plans and Specifications.**

#### **(a) Preparation of Plans.**

(i) ACTA shall select and engage qualified engineering firms, architects and consultants, and/or a design-build contractor, to prepare or furnish for the Project (and each portion and segment thereof) schematic designs, preliminary and final engineering, structural and mechanical plans, preliminary and final construction plans and specifications, and/or design progress submittals (collectively, the "**Plans**"). The Rail Corridor and the Drill Track will be designed consistent and in conformance with the guidelines and standards set forth in the Manual for Railway Engineering promulgated by the American Railway Engineering and Maintenance-of-Way Association in effect at the time of such design, or such other guidelines and standards as may be agreed upon by Union Pacific and ACTA.

(ii) The Railroads shall jointly agree upon and engage a third party consultant or engineering firm to review and provide comments on the Plans on behalf of all such Railroads (the "**Railroad Consultant**"), with the costs of the Railroad Consultant to be subject to the approval of ACTA (such approval not to be unreasonably withheld), and the approved costs shall be reimbursed to the Railroads by ACTA (with such reimbursement to be included in "Net Project Costs," as defined in the Corridor Operating Agreement). As of the date hereof, the Railroads have agreed to engage Hanson Wilson Incorporated as the Railroad Consultant, except that Hanson Wilson Incorporated will not review Plans for the railroad signals

(and the Railroads will divide the task for review of Plans for railroad signals among themselves, and ACTA shall reimburse Union Pacific for its actual costs incurred in connection with Union Pacific's review of such railroad signal Plans). ACTA shall consult with the Railroad Consultant in connection with the preparation and revision of the Plans for the Rail Corridor and the Drill Track (and each segment thereof) to be constructed on the Property (or to be constructed by ACTA on Union Pacific's property), and Union Pacific shall cause the Railroad Consultant to be reasonably available for such purposes.

**(b) Approval of Plans.**

(i) During the planning and design process, or the design/build process, as applicable, ACTA shall deliver to the Railroad Consultant (with a copy to Union Pacific), for the Railroad Consultant's review, comment and approval, copies of each set of Plans for the Project (or any segment thereof) to be constructed on the Property (or to be constructed by ACTA on Union Pacific's property). The Railroads shall cause the Railroad Consultant to provide to ACTA and the designer or the design/build contractor (as the case may be), on behalf of the Railroads, any comments, suggestions or disapprovals regarding each set of Plans, which comments, suggestions or disapprovals shall be delivered (A) with respect to initial or intermediate Plan submittals, within 21 days after the Railroad Consultant's receipt of such set of Plans, and (B) with respect to final Plan submittals, within 28 days after the Railroad Consultant's receipt of such final set of Plans. ACTA shall evaluate and consider the Railroad Consultant's comments and suggestions in good faith, provided that ACTA shall have no obligation to incorporate such comments or suggestions into the Plans, or make any revisions or modifications to the Plans in response thereto, except as provided in this Section 3.3(b). If the Railroad Consultant fails to deliver such written disapproval, or fails to provide the reasonably detailed reason(s) therefor, within the time periods set forth above, such Plans shall be conclusively deemed approved.

(ii) Approval of the Plans shall not be unreasonably withheld, and any disapproval shall set forth in reasonable detail the reasons therefor. Plans may be disapproved by the Railroad Consultant only if, in its reasonable and good faith judgment, (A) the design of the Rail Corridor or the Drill Track is unsafe or fails to comply with any

applicable law or regulation, or (B) the design of the Rail Corridor or the Drill Track is materially inconsistent with or different than the Conceptual Design Layout. With respect to any portion of the Project that is constructed pursuant to the design/build process, the Railroad Consultant may not disapprove or request changes to any matter shown on a design progress submittal if the subject matter of such disapproval or requested change was shown on a prior design progress submittal approved (or deemed approved) by the Railroad Consultant. In no event may the Railroad Consultant disapprove the Plans for any portion of the Project if the Plans are substantially in conformance with the Conceptual Design Layout. If any proposed Plans are disapproved, the parties shall promptly meet and negotiate in good faith to attempt to mutually agree upon acceptable Plans. If they are unsuccessful in resolving such dispute within 10 days thereafter, either party may submit such matter to arbitration pursuant to Article 9 below. Any material modification to any approved Plans shall be subject to the Railroad Consultant's approval in the manner described above.

**(c) Consultation on Other Rail and Non-Rail Portions of the Project.**

In addition to the review and approval procedures set forth in Section 3.3(b) above, ACTA shall reasonably consult with, and solicit comments and input from, Union Pacific and the Railroad Consultant with respect to the Plans for (i) other rail portions of the Project which are not constructed on the Property (or on Union Pacific's property), and (ii) non-rail portions of the Project (such as street widening, grade separations and bridge installations); provided, however, that in no event shall Union Pacific or the Railroad Consultant have any approval or veto rights with respect to any Plans for such other rail or non-rail portions of the Project.

**3.4 Phasing and Scheduling.**

**(a) Project Segments.** ACTA shall determine the specific segments of the Project and the specific order in which the segments shall be planned and constructed. ACTA shall use reasonable efforts to keep Union Pacific reasonably informed of proposed phasing and scheduling for the Project, and the sequence in which ACTA intends to construct specific segments, and shall reasonably consider suggestions regarding such matters made by Union Pacific, provided that ACTA shall have the right to determine the physical locations of the Project which will comprise each segment, the sequence in which each segment shall be

constructed, and the schedule on which such segment shall be constructed. ACTA shall not be obligated to construct segments in a contiguous sequence (*i.e.*, one segment may be constructed in the southern portion of the Rail Corridor, with the next segment to be constructed in the northern portion of the Rail Corridor). Notwithstanding the foregoing or anything else to the contrary set forth in this Agreement, in no event may ACTA (i) cause Union Pacific's rail access to the Vernon Warehouse (located between J Yard and 38th Street) to be disconnected prior to July 1, 1999, nor may such access be disconnected for longer than 12 consecutive months (and if Union Pacific's rail access to the Vernon Warehouse is disconnected for longer than 12 consecutive months, ACTA shall pay Union Pacific \$5,000 for each day longer than 12 consecutive months that such rail access is disconnected), or (ii) physically disconnect or remove the existing tracks on the Property between J Yard and the point that is 1000 feet south of Slauson Avenue prior to July 1, 1999.

(b) **Schedules.** Promptly after deciding that it will commence construction of any segment of the Project, ACTA shall deliver to Union Pacific a construction schedule for that segment, setting forth in chronological order ACTA's anticipated times for commencement of construction and/or the construction periods for the various portions of that segment, which schedule ACTA may revise from time to time as necessary (in ACTA's reasonable judgment), which revisions ACTA shall promptly deliver to Union Pacific. ACTA shall cause its engineers and consultants to complete the Plans (or, for any portions of the Project constructed using the design/build process, ACTA shall cause the design/build contractor to complete design progress submittals) for each segment of the Project in the general order of the phasing schedule (as revised from time to time). Subject to the provisions of this Agreement, ACTA shall use reasonable efforts to plan and schedule such segments, and to construct the Project, in a manner which, to the extent reasonably possible, will minimize any material interference with Union Pacific's Local Freight Service and Overhead Freight Service over the Property (or over the Santa Ana Bypass Track, after construction thereof).

**(c) Construction of Rail Corridor North of the Compton Creek**

**Bridge.**

(i) With respect to the portion of the Rail Corridor north of the Compton Creek Bridge, construction shall be safer, more efficient and substantially less expensive if Union Pacific conducts all Overhead Freight Service and Local Freight Service on (or from) the Santa Ana Bypass Track only, and eliminates rail service on all other portions of the Property between the Compton Creek Bridge and J Yard during construction. Accordingly, if and provided that (A) ACTA has completed the Santa Ana Bypass Track and the Replacement Storage Tracks, and (B) ACTA has made available to Union Pacific ACTA's Construction Contribution and the Wilmington Branch Contribution in the manner set forth in Section 3.4(d) below, then (x) ACTA may physically disconnect or remove the existing tracks (other than the Santa Ana Bypass Track) on the Property at any and all locations north of the Compton Creek Bridge during construction of such portion of the Rail Corridor, regardless of whether Union Pacific actually has constructed all or any of the Union Pacific Construction Projects or the Wilmington Branch Improvements, provided that ACTA's construction shall not impair continuous access and operation from the junction of Union Pacific's Wilmington and San Pedro Branches in the northeastern corner of J Yard to the East Bank of the Los Angeles River, and provided further that ACTA shall comply with the time limitations set forth in the last sentence of Section 3.4(a) above, and (y) Union Pacific shall cease all Overhead Freight Service and Local Freight Service between the Compton Creek Bridge and J Yard (other than on and from the Santa Ana Bypass Track) from and after the commencement date specified in ACTA's Notice to Proceed until such time as both Railroads are permitted to commence Overhead Freight Service on the portion of the Rail Corridor north of the Compton Creek Bridge pursuant to the Corridor Operating Agreement.

(ii) Notwithstanding anything to the contrary set forth herein (but subject to clause (i) of Section 3.4(a), which provides that Union Pacific's rail access to the Vernon Warehouse may not be disconnected for longer than 12 consecutive months), if after disconnecting the mainline tracks between the Compton Creek Bridge and J Yard ACTA has not undertaken any substantial construction activity on such portion of the Rail Corridor for a period of two consecutive years after construction on such portion has commenced (subject to the force

majeure events described in Section 11.13 below, other than the ability to obtain financing or governmental funding), or if more than 10 years has elapsed since the commencement of construction on such portion of the Rail Corridor, then ACTA promptly shall either (A) reconnect any mainline tracks which ACTA previously disconnected north of the Compton Creek Bridge to allow Union Pacific to recommence its Overhead Freight Service on the portion of the Property north of the Compton Creek Bridge, or (B) construct a second mainline track on those portions of Union Pacific's Wilmington Branch between mile post BBM 487.41 and mile post BBM 496.5 which are not then double-tracked, provided that ACTA shall have no obligation to construct more than 5.6 miles of track (with ACTA to have the right to elect, in ACTA's sole discretion, whether ACTA shall reconnect any such severed tracks pursuant to clause (A) above or construct such second mainline track pursuant to clause (B)).

Notwithstanding the preceding sentence, in no event shall ACTA be obligated to provide such reconnection or construction if Union Pacific's existing rail facilities have sufficient capacity to accommodate (without significant reductions in operational efficiency) Union Pacific's and BNSF's (if BNSF is then using Union Pacific's rail facilities pursuant to Section 2.4 of the Corridor Operating Agreement) then existing volume of Overhead Freight Service and Local Freight Service between the Ports and the East Bank of the Los Angeles River and certain intermediate points, in which case such obligation of ACTA shall not arise until such time, if ever, as Union Pacific's existing rail facilities do not have sufficient capacity to accommodate (without significant reductions in operational efficiency) Union Pacific's and BNSF's volume of such Overhead Freight Service and Local Freight Service, and such obligation shall terminate, in any event, upon Corridor Substantial Completion north of the Compton Creek Bridge. If any traffic of Union Pacific can be rerouted over the UP San Pedro Branch without diminishing the efficiency of Union Pacific's Local Freight Service or Overhead Freight Service and without increasing Union Pacific's operating costs, then Union Pacific shall use the UP San Pedro Branch for such traffic and such additional capacity shall be taken into consideration in determining whether Union Pacific's existing rail facilities have sufficient capacity to accommodate Union Pacific's and BNSF's (if BNSF is then using Union Pacific's rail facilities pursuant to Section 2.4 of the Corridor Operating Agreement) then existing volume of Overhead Freight Service and Local Freight Service.



(iii) During construction of the portion of the Rail Corridor north of the Compton Creek Bridge, if Union Pacific is then serving industry customers adjacent to such portion of the Property by rail, Union Pacific shall serve such local industry customers on and from the Santa Ana Bypass Track or, if service on and from the Santa Ana Bypass Track is not physically possible, then in accordance with Section 3.4(f) below.

**(d) Union Pacific Construction Projects and Wilmington Branch Improvements.**

(i) Union Pacific may construct the Union Pacific Construction Projects and the Wilmington Branch Improvements at any time after the date hereof, provided that neither Owner nor ACTA shall have any obligation to reimburse Union Pacific for any amount in connection with the Union Pacific Construction Projects until after ACTA has delivered the Notice to Proceed. The Union Pacific Construction Projects and the Wilmington Branch Improvements shall be constructed on property owned or acquired by Union Pacific and no portion of the Union Pacific Construction Projects or the Wilmington Branch Improvements shall be constructed on the Property. From time to time after the date hereof (with respect to the Wilmington Branch Improvements) and after the Notice to Proceed (with respect to the Union Pacific Construction Projects), but in no event no more frequently than once in any 30-day period for any of such improvements, Union Pacific may deliver to ACTA invoices for the Wilmington Branch Improvements and the Union Pacific Construction Projects, respectively, or portions thereof, completed after the date of this Agreement and prior to presentation of such invoices, which invoices shall set forth with reasonable specificity the work covered thereby and the cost thereof, and ACTA shall reimburse Union Pacific for the costs set forth in such invoices in the manner set forth in Section 11.4 below. ACTA shall have the right to audit such invoices and inspect Union Pacific's improvements to confirm that such improvements which are the subject of such invoice have been completed. Union Pacific shall maintain documentation and bookkeeping relating to the Union Pacific Construction Projects and the Wilmington Branch Improvements in compliance with any legal requirements and shall provide to ACTA any copies thereof necessary to comply with any requirements of governmental entities providing funding for the Project (provided that Union Pacific's failure to

maintain such documentation and books shall not limit ACTA's reimbursement obligations set forth in this Section 3.4(d).

(ii) Notwithstanding anything to the contrary set forth in this Agreement, (A) ACTA shall have no obligation to pay all or any portion of ACTA's Construction Contribution or the Wilmington Branch Contribution if Union Pacific has not commenced construction of the Union Pacific Construction Projects or the Wilmington Branch Improvements, respectively, prior to or within one year after ACTA's Notice to Proceed (which one year period shall be extended in the circumstances described in Section 11.13 below), (B) ACTA shall have no obligation to pay to Union Pacific all or any portion of ACTA's Construction Contribution or the Wilmington Branch Contribution with respect to any Union Pacific Construction Projects or Wilmington Branch Improvements, respectively, which are not completed within one year after Corridor Substantial Completion (which one year period shall be extended in the circumstances described in Section 11.13 below), (C) in no event shall ACTA's obligation for reimbursement with respect to the Union Pacific Construction Projects exceed ACTA's Construction Contribution and Union Pacific shall be solely responsible for the payment of all costs and expenses incurred in constructing the Union Pacific Construction Projects in excess of such amounts, (D) if the total cost of the Wilmington Branch Improvements will exceed \$6,000,000 (the current estimated cost of the Wilmington Branch Improvements), ACTA shall not be obligated to reimburse Union Pacific for any costs or expenses in excess of \$6,000,000 unless Union Pacific first has delivered to ACTA a reasonably detailed statement setting forth the amount of such excess and an explanation thereof and ACTA has approved the expenditure of such excess amount (which approval shall not be unreasonably withheld by ACTA), and Union Pacific shall be solely responsible for the payment of any costs and expenses in excess of \$6,000,000 not approved by ACTA in the foregoing manner, and (E) in no event shall ACTA be obligated to construct or undertake any of the Union Pacific Construction Projects or the Wilmington Branch Improvements.

(iii) Except as expressly set forth in this Agreement, ACTA shall have no duty or obligation to repair, replace, reconstruct, improve or upgrade any facilities, fixtures or improvements located on the Property which are removed, disconnected, rendered unusable or left in a worse condition as a result of constructing the Project.

**(e) Construction of Project South of the Compton Creek Bridge.** With respect to construction of the portion of the Project south of the Compton Creek Bridge, the parties shall meet and discuss all feasible alternative methods of construction that will enable Union Pacific to provide continuous Overhead Freight Service between the Ports and Union Pacific's Wilmington Branch in the vicinity of Dominguez Junction (including reasonable access to and from the ICTF, Dolores Yard and Pier B Yard) during such construction. ACTA and Union Pacific, acting reasonably and in good faith, shall select the method of construction which enables Union Pacific to provide continuous Overhead Freight Service between the Ports and Union Pacific's Wilmington Branch in the vicinity of the Dominguez Junction (including reasonable access to and from the ICTF) without material impairment of Union Pacific's operating efficiency and without a material increase in ACTA's cost of construction. Notwithstanding the foregoing, ACTA shall have the right to conduct construction south of the Compton Creek Bridge during Designated Construction Periods to be mutually agreed upon by ACTA and Union Pacific, acting reasonably and in good faith (except that access to the ICTF shall not be disconnected unless there is no reasonable method of undertaking such construction to avoid such disconnection).

**(f) Service to Local Industry Customers During Construction.** Construction of the Santa Ana Bypass Track is intended to provide reasonable access to local industry customers in the vicinity of the Property north of the Compton Creek Bridge (including, without limitation, by way of Union Pacific's Santa Ana Branch) during construction of the Project north of the Compton Creek Bridge. At such times as construction of any portion of the Rail Corridor and Public Improvements is being undertaken in the immediate vicinity of a particular local industry customer, freight rail service to such customer may be impractical or physically impossible. Accordingly, ACTA may sever the connection to such local industry customers (other than the connections to the Santa Ana Bypass Track) in connection with its construction of the Project during such period of construction. Neither Owner nor ACTA (nor their respective contractors) shall have any obligation or liability to Union Pacific with respect to any increased costs which Union Pacific may incur in providing Local Freight Service from the Santa Ana Bypass Track or otherwise, or any claims or actions that any local industry customer may bring against Union Pacific as a result of the rail connection to such customer being temporarily or permanently disconnected and/or the inability of Union Pacific to provide freight

rail service as a result thereof, except to the extent that such costs result from the failure of ACTA to comply in all material respects with the provisions of this Agreement (including, without limitation, constructing the Rail Corridor in accordance with the Conceptual Design Layout and phasing and schedules developed in cooperation with Union Pacific, which gives Union Pacific adequate advance notice of disconnection of its customers' tracks).

**(g) Designated Construction Periods.** Upon the establishment of Designated Construction Periods for particular segments of the Project, Union Pacific shall cease all freight rail operations during such Designated Construction Periods in the areas of the Project affected by such construction, and ACTA shall have the right to disconnect the track in such area while conducting any construction activities, provided that ACTA shall reconnect such track at the end of each Designated Construction Period to permit Union Pacific to conduct freight rail operations on such track until the next Designated Construction Period. Union Pacific's operations on such tracks may need to be at reduced speeds, and may need to comply with other safety rules, to take into account the physical condition of the track during such construction (which rules and operational procedures will be discussed and mutually agreed upon in advance by Union Pacific and ACTA). During any Designated Construction Period, Union Pacific shall remove (or cause to be removed) from the area of construction all Union Pacific personnel and all trains, cars, equipment and other personal property owned, operated or stored by Union Pacific or its affiliates or subsidiaries. Neither Owner nor ACTA shall have any liability for any loss, damage or destruction of or to any such items remaining on such area during the Designated Construction Period, and Union Pacific releases Owner and ACTA from and against any liability with respect thereto.

**(h) No Temporary Facilities.** Other than ACTA's construction of (or reimbursement to Union Pacific for) the Santa Ana Bypass Track, the Replacement Storage Tracks, the Wilmington Branch Improvements, the temporary shoo-fly of the La Habra Branch to maintain Union Pacific's rail operations thereon during construction of the La Habra Branch grade separation, and the Union Pacific Construction Projects, neither Owner nor ACTA shall have any duty or obligation to construct (or pay or reimburse Union Pacific for the construction of) any temporary or other facilities to enable Union Pacific to continue to provide freight rail service on and from the Property during construction of the Project.

(i) **Rent Termination Event.** Owner, ACTA and Union Pacific agree that for purposes of the Interim Operating Agreement, the Rent Termination Event (as defined therein) shall be deemed to have occurred on July 1, 1999, or, if later, on the date that ACTA physically disconnects or removes the existing tracks on the property between J Yard and the point that is 1,000 feet south of Slauson Avenue.

**3.5 Utility Relocation.** Except as set forth in the Purchase Agreement (the provisions of which shall control this Section 3.5), ACTA shall make any and all arrangements, at the expense of entities other than Union Pacific, as may be necessary to secure the relocation of utility lines, communication lines, fiber optic lines, pipelines or other facilities, whether owned by private or public parties, which may be necessary to relocate due solely to the construction of the Project. Union Pacific shall cooperate (or cause its affiliates, subsidiaries, successors and assigns to cooperate) in good faith with ACTA in connection with the relocation of the items set forth in this Section 3.5.

**3.6 Reimbursement for Certain Improvements.** In consideration of the construction of the Project by (or on behalf of) ACTA, Union Pacific shall pay ACTA the following amounts at the following times:

(a) **Replacement Storage Tracks.** Union Pacific shall pay ACTA an amount equal to the sum of (i) \$125 multiplied by the number of track feet comprising the Replacement Storage Tracks located on property owned by Union Pacific (or over which Union Pacific has or acquires rights), plus (ii) \$50,000 multiplied by the number of turnouts on any of the Replacement Storage Tracks located on property owned by Union Pacific (or over which Union Pacific has or acquires rights). As of the date hereof, the parties estimate that the Replacement Storage Tracks located on property owned by Union Pacific (or over which Union Pacific has or acquires rights) will consist of 30,000 track feet and 21 turnouts (for a total payment of \$4,800,000 for such Replacement Storage Tracks), but Union Pacific's final payment obligation will be adjusted based upon the actual number of track feet and turnouts comprising the Replacement Storage Tracks. If construction of the Replacement Storage Tracks has been completed and the Replacement Storage Tracks have been placed in service, then Union Pacific

shall pay ACTA (in the manner set forth in Section 11.4) the amount calculated pursuant to this Section 3.6(a) on December 31, 1999.

(b) **Dolores Yard Tail Track.** Union Pacific shall pay ACTA an amount equal to \$125 multiplied by the number of track feet comprising the Dolores Yard Tail Track. As of the date hereof, the parties estimate that the Dolores Yard Tail Track will consist of 5,000 track feet (for a total payment of \$625,000), but the final payment obligation will be adjusted based upon the actual number of track feet comprising the Dolores Yard Tail Track. Union Pacific shall pay ACTA such amount (in the manner set forth in Section 11.4) after construction of the Dolores Yard Tail Track is complete and the Dolores Yard Tail Track is placed in service.

(c) **Northerly Drill Track.** Union Pacific shall pay ACTA the amount of \$5,200,000. Union Pacific shall pay ACTA such amount (in the manner set forth in Section 11.4) after construction of the Northerly Drill Track is complete and the Northerly Drill Track is placed in service.

(d) **Southerly Drill Track.** Union Pacific shall pay ACTA the amount of \$4,000,000 (in addition to conveying to ACTA the Additional Land needed to construct the portion of the Southerly Drill Track between Carson Street and 223rd Street as set forth in Section 3.2 above). Union Pacific shall pay ACTA such amount (in the manner set forth in Section 11.4) after construction of the Southerly Drill Track is complete and the Southerly Drill Track is placed in service.

(e) **Santa Ana Bypass Track.** If Union Pacific so elects, or is deemed to elect (as set forth in this Section 3.6), Union Pacific may continue to use all or a portion of the Santa Ana Bypass Track as a portion of the Drill Track after Corridor Substantial Completion. Union Pacific's use of and operation on all or any portion of the Santa Ana Bypass Track after the date that is one year after Corridor Substantial Completion shall be deemed Union Pacific's election to use the Santa Ana Bypass Track, or such portion thereof, as a portion of the Drill Track. In such event, Union Pacific shall pay ACTA an amount equal to (i) \$100 multiplied by the number of track feet comprising the Santa Ana Bypass Track (or the portion thereof that Union Pacific elects, or is deemed to elect, to use), plus (ii) \$45,000 multiplied by the number of grade crossings on the Santa Ana Bypass Track (or the portion thereof that Union Pacific elects,

or is deemed to elect, to use), plus (iii) if Union Pacific elects, or is deemed to elect, to use the entire Santa Ana Bypass Track, or a portion thereof which includes the support structure for the Santa Ana Bypass Track over the Rail Corridor in the vicinity of Rosecrans Avenue, the amount of \$2,600,000. As of the date hereof, the parties estimate that the Santa Ana Bypass Track will consist of 33,000 track feet and 18 grade crossings (such that, if Union Pacific elected to use the entire Santa Ana Bypass Track as a portion of the Drill Track, the payment for track would be \$3,300,000 and the payment for grade crossings would be \$810,000), but the final payment obligation will be adjusted based upon the actual number of track feet and grade crossings on the Santa Ana Bypass Track, or the portion thereof that Union Pacific elects to use. Union Pacific shall pay ACTA such amount (in the manner set forth in Section 11.4) after Union Pacific elects (or is deemed to elect) to use the Santa Ana Bypass Track (or portions thereof) as a portion of the Drill Track. If Union Pacific does not elect to use all or some portion of the Santa Ana Bypass Track as a portion of the Drill Track, Union Pacific shall not be obligated to pay ACTA the foregoing amounts, and either Owner or ACTA thereafter may remove and salvage the Santa Ana Bypass Track (or the portions thereof not used by Union Pacific) at its election.

#### **ARTICLE 4**

#### **GENERAL CONSTRUCTION PROVISIONS**

##### **4.1 Permits and Licenses**

(a) Except as otherwise provided for in this Agreement and other than for work performed by Union Pacific on its property, ACTA shall furnish or cause to be furnished at ACTA's sole cost and expense all permits, licenses, labor, materials, tools and equipment for the design and construction of the Project (including the Santa Ana Bypass Track and the Replacement Storage Tracks). Union Pacific shall reasonably cooperate with ACTA (at no cost to Union Pacific) in obtaining any such permits and licenses ACTA is required to obtain.

(b) Except as otherwise provided for in this Agreement and other than for work performed by ACTA on Owner's property, Union Pacific shall furnish or cause to be furnished at Union Pacific's sole cost and expense all permits, licenses, labor, materials, tools and equipment for the design and construction of the Union Pacific Construction Projects and the Wilmington Branch Improvements. Owner and ACTA shall reasonably cooperate with Union



Pacific (at no cost to Owner or ACTA) in obtaining any such permits and licenses Union Pacific is required to obtain. Any approval by or consent of POLA and/or POLB which may be given pursuant to this Agreement with respect to the subject matter hereof shall not be deemed or construed as eliminating or reducing Union Pacific's obligation to obtain any licenses, permits, approvals, franchises or entitlements which may be necessary or required from the City of Los Angeles or the City of Long Beach (as the case may be), or from departments or agencies thereof other than POLA and POLB.

**4.2 Compliance with Law.** ACTA's construction of the Project (including the Santa Ana Bypass Track and the Replacement Storage Tracks), and Union Pacific's construction of the Union Pacific Construction Projects and the Wilmington Branch Improvements, shall comply with all applicable legal requirements (including, without limitation, the requirements of the California Public Utilities Commission) and any applicable safety requirements. Once commenced, construction of the Project shall proceed with reasonable diligence to Corridor Substantial Completion, subject to the provisions of Section 11.13 below; and, with respect to the portion of the Rail Corridor north of the Compton Creek Bridge, subject to the availability of financing at reasonable times.

**4.3 Grade Crossing Signals.** Subject to the provisions of Section 3.6 above, ACTA shall be responsible for the cost of any improvements to any grade crossing warning device signals that are required to be installed, upgraded, relocated or modified in connection with construction of the Project.

**4.4 Flagging.** ACTA shall provide all necessary flagging and protection against conflicts with train, yard or terminal operations and similar activities to assure safe operations during construction of the Project. If any such flagging is provided by Union Pacific at the request of ACTA, ACTA shall reimburse Union Pacific for all reasonable costs and expenses incurred by Union Pacific in connection therewith, which reimbursement shall be made in accordance with Section 11.4 below.

**4.5 Delays in Construction.** Notwithstanding any other provision of this Agreement, and provided that Union Pacific is in compliance with (i) the terms and conditions of this Agreement with respect to its freight rail operations over the Property during construction of

the Project (including, without limitation, the requirements of Section 3.4(c) and Section 3.4(g) above) and (ii) its obligation under this Agreement to provide access to ACTA to construct portions of the Project on Union Pacific's property, ACTA shall not make any claim against Union Pacific for delays to ACTA's contractors due to or caused by Union Pacific's performance of its freight rail operations. Each party shall cooperate in good faith with the other party in connection with the construction of the Project and will use reasonable efforts to prevent any delays in construction of the portions of the Project being constructed by the other party, and shall cooperate reasonably and in good faith to establish schedules relating to their respective portions of the Project to avoid, to the extent possible, interference or delays during construction (including, without limitation, Union Pacific's use of Union Pacific's other rail lines for freight rail operations to and from the Ports). Without limiting the generality of the foregoing:

(x) construction of portions of the Project using the design/build process shall require the reasonable cooperation of the parties to meet the expedited schedules of the design/build contractor, and ACTA and Union Pacific shall cooperate reasonably and in good faith to meet those expedited schedules;

(y) Union Pacific shall construct the Union Pacific Construction Projects in a timely manner in order to avoid delaying the construction schedule of ACTA's contractor(s). In furtherance of the foregoing, Union Pacific shall turn over to ACTA and its contractor(s), no later than April 1, 2001, the portion of Dolores Yard on which Union Pacific's engine fueling facility currently is located (which shall require, without limitation, Union Pacific's removal of all existing improvements on such portion of the Property, and remediation of any environmental contamination of such portion of the Property in accordance with the provisions of the Purchase Agreement). If Union Pacific will be unable to turn over such portion of the Property to ACTA in the required condition on or before April 1, 2001, then Union Pacific shall notify ACTA of such fact on or before October 1, 2000, and in such event Union Pacific shall designate an alternative location to convey to Owner in substitution for such portion of the Property. Such alternative location shall be reasonably acceptable to Owner and ACTA, shall be sufficient for construction of the Rail Corridor over such property in accordance with the standards established in this Agreement, and shall be conveyed to Owner, at no cost to

Owner, no later than April 1, 2001 in the same condition as described above in this paragraph. In connection with Union Pacific's conveyance of such alternative location to Owner, Owner shall reconvey to Union Pacific (at no cost to Union Pacific) the portion of the Property located in Dolores Yard that Union Pacific was unable to turn over to ACTA in the manner described above; and

(z) Union Pacific shall provide ACTA and its contractor(s) with access to Union Pacific's property to enable ACTA and its contractor(s) to construct the Replacement Storage Tracks and other portions of the Project to be constructed by ACTA on Union Pacific's property in a timely manner in order to avoid delaying the construction schedule of ACTA's contractor(s).

#### **4.6 Costs and Expenses.**

(a) Except as expressly set forth in this Agreement and the Corridor Operating Agreement (including, without limitation, the reimbursement obligations set forth in Section 3.6 of this Agreement), as between Union Pacific and ACTA, ACTA shall be solely responsible for the payment of all costs and expenses incurred by ACTA in connection with the design and construction of the Project (which costs and expenses shall be included in "Net Project Costs," as that term is defined in the Corridor Operating Agreement), and Union Pacific shall be solely responsible for the payment of all costs and expenses incurred by Union Pacific in connection with the design and construction of the Union Pacific Construction Projects and the Wilmington Branch Improvements.

(b) Notwithstanding the foregoing and any other provision of this Agreement, (i) the costs and expenses associated with any environmental contamination which is discovered on the Property during the construction of the Project and all remediation and abatement thereof, shall be allocated and paid pursuant to the terms and indemnity provisions of the Purchase Agreement or the Interim Operating Agreement, as applicable, (ii) the provisions of this Agreement shall not be deemed or construed to limit, modify or terminate any of Union Pacific's obligations or liabilities under the Purchase Agreement with respect to title warranties and other representations and warranties made by Union Pacific thereunder, all of which shall control the provisions of this Agreement, (iii) the provisions of this Agreement shall not be

deemed or construed to limit, modify or terminate any of Union Pacific's obligations or liabilities which Union Pacific may have under agreements with other parties (including, without limitation, agreements with Union Pacific's local industry customers and agreements for contribution to the construction of the Del Amo Boulevard/Alameda Street and the Carson Street/Alameda Street grade separations) relating to improvements on or about the Property, and (iv) nothing set forth in this Agreement shall be deemed or construed to alter, limit, modify or amend the provisions in the Corridor Operating Agreement and/or the Drill Track Operating Agreement relating to the payment of a rental fee or use fee, or the calculation thereof.

(c) Except as otherwise provided in the Corridor Operating Agreement or in Section 4.6(b) above, parties other than Union Pacific shall pay all costs and expenses in connection with the design and construction of all grade separations relating to the Project, including without limitation, any required railroad contributions thereto, except that Union Pacific will initially fund the railroad contribution with respect to Proposition 116 for the four grade separation projects to be funded with Proposition 116 funds (*i.e.*, the grade separations at Pacific Coast Highway, Sepulveda Boulevard, Del Amo Boulevard and Alameda Street). ACTA will reimburse Union Pacific for such contribution, with interest thereon from the date the contribution is made by Union Pacific until paid at the rate of 6% per annum for the first four years after the date such funds are advanced by Union Pacific and thereafter at a fluctuating rate equal to two (2) percent above the six months London Interbank Offered Rates (LIBOR) published in the Money Rates column or section of the Wall Street Journal (or, if LIBOR is no longer published or if such publication is discontinued for any reason, then a comparable index or financial journal), such rate to be adjusted commencing with the first month after the fourth anniversary date of the advance and every three months thereafter, on the first date in each such month that such LIBOR rate is so published. ACTA's reimbursement of the costs and expenses so paid by Union Pacific, and the interest accrued thereon, shall be due and payable with respect to each of such four grade separation projects upon Corridor Substantial Completion.

(d) Except as otherwise provided in this Agreement or in the Corridor Operating Agreement, each party will be solely responsible for the payment of any costs and expenses incurred by such party (including, without limitation, the salaries and fees of such party's in-house personnel, attorneys, accountants and consultants and Designated

Representative) in connection with (i) reviewing any item associated with the Project, including, without limitation, contracts, Plans, reports, designs and drawings of the Project, (ii) consulting with the other party in connection with the construction of the Project pursuant to the terms hereof, and (iii) monitoring construction of the Project (to the extent such party elects to do so). Notwithstanding the foregoing, if ACTA or its contractor(s) request that a Union Pacific engineering manager be present during any construction activities, or that other employees of Union Pacific provide services relating to construction of the Project which are not contemplated by this Agreement, or if Union Pacific notifies ACTA that the presence of a Union Pacific engineering manager is necessary during construction activities or that it is necessary that other Union Pacific employees provide services relating to construction of the Project which are not contemplated by this Agreement, and ACTA (acting reasonably) concurs with Union Pacific's determination, then in any of such events ACTA shall reimburse Union Pacific for Union Pacific's reasonable costs and expenses of providing such engineering manager or other employee(s) for such purpose.

(e) ACTA hereby represents and warrants that, except as otherwise provided in the Corridor Operating Agreement, it has not agreed (and that it will not agree) to pay any costs or expenses which may be incurred by BNSF in connection with BNSF's review of or consultation regarding the Plans or the construction of the Project (other than costs or expenses incurred by BNSF which are similar to the costs and expenses described in the last sentence of Section 4.6(d)).

#### **4.7 Cooperation.**

(a) The scope and complexity of constructing the Project is such that certain inconveniences and interference with Union Pacific's freight rail operations are inevitable. Union Pacific and ACTA shall reasonably and in good faith cooperate (i) during the planning and construction process to minimize such inconvenience and interference and to facilitate the efficient and timely construction of the Project, and (ii) in the scheduling and construction of the Project, including, without limitation, cooperating to obtain all permits and licenses necessary to construct the Project, and Union Pacific shall cooperate (at no expense to

Union Pacific) in ACTA's efforts to obtain all financing necessary to construct the Rail Corridor and Public Improvements.

(b) In addition to the foregoing, (i) Union Pacific shall use reasonable efforts to conduct its rail freight operations on and around the Property in a manner designed to not interfere with the construction of the Project, (ii) Union Pacific shall grant to ACTA and/or ACTA's contractors, at no cost or consideration, temporary easements on terms and conditions reasonably acceptable to Union Pacific (including reasonable provisions requiring ACTA to indemnify, defend and hold harmless Union Pacific from and against all liabilities, losses, actions, penalties, claims, demands, damages, detriments, costs, charges, judgments and expenses (including, without limitation, reasonable attorneys' fees and costs) which arise either directly or indirectly from the use or presence of such easements, provided such indemnity shall not cover the gross negligence or willful misconduct of Union Pacific) over portions of Union Pacific's other property to the extent reasonably necessary for the construction of the Project and vehicular and pedestrian ingress thereto and egress therefrom, and for the storage and staging of construction materials and equipment, provided that such easements shall not materially impair Union Pacific's existing or reasonably contemplated use of or freight rail operations on such other property, (iii) Union Pacific shall grant to Owner, at no cost or consideration, a permanent easement over the tracks and track support structures connecting the Rail Corridor to the ICTF for ingress to and egress from the ICTF to and from the Rail Corridor on terms and conditions to be set forth in a joint operating agreement reasonably satisfactory to Union Pacific and Owner to be entered into prior to the use of such easement by any other railroad, provided that so long as Union Pacific is the lessee of the ICTF, Owner shall not (and shall not permit any other railroad to) operate or provide any freight rail operations to the ICTF on or over such tracks and track support structures, and (iv) Union Pacific shall grant to Owner at no cost or consideration, permanent easements in, on, over and under portions of Union Pacific's other property for subjacent and lateral support, and for the placement of any necessary underground footings, foundations, facilities, pipelines or utilities reasonably necessary for the Project; provided that (x) such easements shall not materially impair Union Pacific's existing or reasonably contemplated use of or freight rail operations on such other property, (y) Owner shall pay all costs relating to the use by Owner of such easements (including, without limitation, the costs of relocating any existing utilities or other facilities), and (z) such easements shall be on terms and

conditions reasonably acceptable to Union Pacific (including reasonable provisions requiring Owner to indemnify, defend and hold harmless Union Pacific from and against all liabilities, losses, actions, penalties, claims, demands, damages, detriments, costs, charges, judgments and expenses (including, without limitation, reasonable attorneys' fees and costs) which arise either directly or indirectly from the use or presence of such easements, provided such indemnity shall not cover the gross negligence or willful misconduct of Union Pacific).

(c) Upon request of Union Pacific or Southern Pacific

Telecommunications Company or its successor or assign ("SP Telecom"), Owner shall grant SP Telecom, without charge, a 10 foot wide fiber optic easement to cross the Property in the vicinity of Dominguez Junction, the specific form and location of which shall be reasonably acceptable to Owner and SP Telecom. The form of such easement shall include reasonable provisions requiring SP Telecom to (i) indemnify, defend and hold harmless the Owner Indemnified Parties from and against all liabilities, losses, damages, actions, penalties, claims, demands, detriments, costs, charges, judgments and expenses (including, without limitation, reasonable attorneys' fees and costs) which arise either directly or indirectly from the use or presence of such easement (provided such indemnity shall not cover the gross negligence or willful misconduct of Owner), and (ii) relocate its facilities at SP Telecom's sole cost and expense if necessary for the construction, operation and/or maintenance of the Rail Corridor under the Corridor Operating Agreement, in Owner's reasonable discretion, or otherwise reasonably required by Owner

**4.8 No Obligation to Construct.** Notwithstanding anything to the contrary set forth in this Agreement, neither Owner nor ACTA is in any way obligated to construct the Project, or to construct the Project within any specified time period (except that this Section 4.8 shall not supersede other provisions of this Agreement which address delays in construction after such construction has commenced). Rather, the purpose of this Agreement is to provide for the parties' respective rights and obligations if the Project is constructed.

**4.9 Economic Effect of the Project.** Neither Owner nor ACTA shall in any way be liable (except as a result of a default by Owner or ACTA of their respective obligations under this Agreement or the Purchase Agreement) for any economic impacts on Union Pacific's freight



rail operations, or the operations of Union Pacific's affiliates, subsidiaries, successors or assigns (by operation of law or otherwise), which arise as a result of the Project being constructed, including, without limitation, any temporary or permanent loss of local industry customers or the loss of business or revenues from the ICTF.

**4.10 Salvage.** Proceeds from the salvage of materials removed from the Property in connection with construction of the Project shall be the sole property of ACTA, regardless of who may have paid for the original construction or installation of such materials.

**4.11 Transportation of Materials.** Union Pacific shall, at the request of ACTA, transport construction materials for the Rail Corridor and the Drill Track to areas designated by ACTA, which materials shall be transported to and from the Property at a cost calculated as shown on Exhibit E, and the transportation of which shall be at times reasonably agreed upon by Union Pacific and ACTA.

**4.12 Waiver of Relocation Assistance.** Union Pacific hereby waives any right to any costs of relocation benefits or assistance under the California Relocation Assistance Act (Calif. Government Code Section 7260 et seq.) and the Uniform Relocation Assistance and Real Property Act of 1970, as amended (42 U.S.C. Section 4601 et. seq.) with respect to the construction of the Project (including, without limitation, Union Pacific ceasing operating on any part of the Property during construction).

## **ARTICLE 5**

### **PAYMENT TO UNION PACIFIC**

As partial consideration for the sale of the Property by Old SPT and Union Pacific entering into this Agreement, POLA previously paid Old SPT \$27,930,000 by wire transfer of immediately available funds, and POLB previously executed and delivered to Old SPT one or more promissory note(s) in the aggregate amount of \$33,000,000 and in the form of Exhibit F (the "POLB Note"). Payment under the POLB Note is not conditioned in any way on the performance by Union Pacific or Old SPT of any covenants or agreements of Old SPT or Union Pacific contained in this Agreement or any other agreement and no default by Union Pacific under this Agreement or any other agreement shall excuse any payment under the POLB Note.

In addition, POLB waives any right to offset the payments due under the POLB Note against any payments or obligations of whatever nature owing from Union Pacific to POLB, except that, in the event that Union Pacific defaults in its payment obligations under the Promissory Note dated December 22, 1994 from Old SPT (as maker), payable to POLB, then POLB may set off the principal amount of such delinquent payment(s) only against the \$11,500,000 principal payment due under the POLB Note on its maturity date. In the event that the POLB Note is invalidated as a result of the referendum process applicable to the POLB Note under the City Charter of POLB, unless POLB pays to Union Pacific the discounted present value of the invalidated POLB Note (at 6% per year), or provides other consideration acceptable to Union Pacific in Union Pacific's sole discretion, (i) Union Pacific shall have no further obligations under this Agreement, (ii) POLB shall be obligated to construct the Drill Track in a manner which will enable Union Pacific to perform its legal obligations to provide freight rail service to its customers, and (iii) POLB shall indemnify, defend and hold Union Pacific and its affiliates (and their respective officers, directors, employees, agents, consultants, successors and assigns) harmless from and against any and all claims, actions, penalties, liabilities, losses, demands, damages, detriments, judgments, charges, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by or brought against Union Pacific as a result of any failure of Owner to so construct the Drill Track.

## **ARTICLE 6**

### **OWNERSHIP**

**6.1 Ownership of Project Facilities.** Owner shall own full right, title and interest in and to the Rail Corridor and Public Improvements located on the Property, including, without limitation, the Property and all rails, tracks, ties, ballast, switches, stations, signals and other facilities constructed, located or maintained on the Property, whether or not such items were constructed by or at the expense of Owner. Notwithstanding the foregoing, Owner may lease (or grant other rights to use) the Property and all (or a portion) of the improvements and facilities constructed thereon to ACTA or another entity in which Owner is a member.

**6.2 Ownership of Facilities on Union Pacific Property.** Union Pacific shall own all replacement track, engine-servicing equipment, engine turning facilities and other

railroad facilities constructed by or at the expense of Owner or ACTA or any property owned by Union Pacific (including, without limitation, all of the Union Pacific Construction Projects constructed on property owned by Union Pacific).

**6.3 Ownership of Drill Track.** Union Pacific shall own all rail facilities, including, without limitation, tracks, switches, ties, rails, ballast, stations storage tracks, roadway crossing protection, signals and warning devices relating to or comprising a part of the Drill Track, after construction thereof and payment therefor by Union Pacific to ACTA pursuant to the provisions of this Agreement.

## **ARTICLE 7**

### **MAINTENANCE**

**7.1 Maintenance of Facilities Prior to and During Construction.** All obligations relating to the maintenance and repair of the Property prior to construction of the Project, and maintenance and repair of the Santa Ana Bypass Track and the Replacement Storage Tracks located on the Property during construction of the Project, as well as portions of the Property on which construction activities for the Project are not being conducted and on which Union Pacific continues to operate, shall be governed by the Interim Operating Agreement.

**7.2 Maintenance of Project.** All maintenance and repair of the Project after construction shall be governed by the Drill Track Operating Agreement or the Corridor Operating Agreement, as the case may be.

## **ARTICLE 8**

### **DEFAULT AND REMEDIES**

**8.1 Default.** In the event that any party fails to perform or comply with its obligations hereunder, and such default continues for 30 days after written notice thereof, the non-defaulting party may commence arbitration for monetary damages or specific performance in accordance with the provisions of Article 9; provided, however, that if such default results in a work stoppage or delay in construction, the cure period shall be five days after written notice thereof. In addition, in the event of any material default by Union Pacific under this Agreement which remains uncured for a period of 60 days after delivery of a notice of default by Owner or

ACTA to Union Pacific, such default shall constitute a default under the Interim Operating Agreement and the Corridor Operating Agreement and Owner and ACTA shall be entitled to exercise their respective remedies thereunder; provided, however, that if the cure of such default can reasonably be expected to take more than 60 days, Union Pacific shall be deemed to have effectuated a cure if Union Pacific commences such cure within 60 days of notice and proceeds to complete all activities necessary and does in fact complete such cure using due diligence. Construction of the Project in accordance with this Agreement confers unique benefits on each party and upon the Cities of Los Angeles and Long Beach. Consequently, no party shall have the right to terminate this Agreement for any reason whatsoever, except that either Owner or ACTA may terminate this Agreement if either elects, in its sole discretion, not to proceed with the construction of the Rail Corridor and Public Improvements; provided, however, that (i) such termination shall not affect any liabilities of Union Pacific, Owner or ACTA arising or accruing prior to the date of such termination, and (ii) ACTA shall be obligated to complete the construction of any segment of the Rail Corridor south of the Compton Creek Bridge on which construction has commenced prior to the date of such termination.

**8.2 Remedies.** In any action or arbitration proceeding relating to or arising from this Agreement, to enforce this Agreement, to collect damages as a result of a breach of the provisions hereof, or to collect any indemnity provided for herein, the prevailing party shall also be entitled to collect all its reasonable costs in such action or arbitration, including the reasonable costs of investigation, settlement, expert witnesses and attorneys', engineers' and consultants' fees, together with all additional costs incurred in enforcing or collecting any arbitration award or judgment rendered. No party shall be entitled to be awarded exemplary or punitive damages. The provisions of this Section 8.2 shall survive the entry of any judgment.

## **ARTICLE 9**

### **RESOLUTION OF DISPUTES**

#### **9.1 ARBITRATION--NO CONSTRUCTION STOPPAGE.**

(a) IN THE EVENT OF A CLAIM OR DISPUTE ARISING OUT OF THIS AGREEMENT, THE PARTIES SHALL MAKE GOOD FAITH EFFORTS TO RESOLVE THE DISPUTE THROUGH NEGOTIATION. FAILING A RESOLUTION OF

THE DISPUTE OR CLAIM THROUGH THESE GOOD FAITH EFFORTS WITHIN 30 DAYS AFTER THE COMMENCEMENT OF THE DISPUTE OR CLAIM, ANY PARTY MAY SERVE UPON THE OTHER A WRITTEN DEMAND FOR ARBITRATION. THE PARTIES SHALL, WITHIN 15 DAYS THEREAFTER, OR WITHIN SUCH EXTENDED PERIOD AS THEY SHALL AGREE TO IN WRITING, ATTEMPT TO AGREE UPON A MUTUALLY SATISFACTORY ARBITRATOR. IF THEY ARE UNABLE TO SO AGREE, THEN, PRIOR TO THE EXPIRATION OF SAID 15-DAY PERIOD, OWNER AND ACTA TOGETHER SHALL DESIGNATE ONE PERSON TO ACT AS ARBITRATOR, AND UNION PACIFIC SHALL DESIGNATE ONE PERSON TO ACT AS ARBITRATOR. THE TWO DESIGNATED ARBITRATORS SHALL PROMPTLY SELECT A THIRD ARBITRATOR ("NEUTRAL ARBITRATOR"). ANY ARBITRATOR, INCLUDING THE NEUTRAL ARBITRATOR, SELECTED PURSUANT TO THE TERMS HEREOF SHALL BE A PERSON WITH AT LEAST FIVE YEARS' EXPERIENCE WITH THE DESIGN, CONSTRUCTION AND OPERATION OF MAJOR RAILROAD FACILITIES.

(b) IF OWNER AND ACTA (ON THE ONE HAND) OR UNION PACIFIC (ON THE OTHER) FAILS TO DESIGNATE ITS ARBITRATOR WITHIN 15 DAYS AFTER THE DATE OF DELIVERY OF THE DEMAND FOR ARBITRATION (OR THE AGREED UPON EXTENDED PERIOD), OR IF THE TWO DESIGNATED ARBITRATORS ARE UNABLE TO SELECT A NEUTRAL ARBITRATOR WITHIN 15 DAYS AFTER THEIR APPOINTMENT, A NEUTRAL ARBITRATOR SHALL BE DESIGNATED PURSUANT TO SECTION 1281.6 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. SECTION 1283.05 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE IS SPECIFICALLY MADE APPLICABLE TO THIS AGREEMENT, BUT ONLY WITH RESPECT TO THOSE ISSUES NOT INVOLVING CONSTRUCTION STOPPAGE (WHICH SHALL BE ARBITRATED PURSUANT TO SECTION 9.2 BELOW). THE AWARD OF THE MUTUALLY-DESIGNATED ARBITRATOR OR NEUTRAL ARBITRATOR, AS THE CASE MAY BE, SHALL BE SUPPORTED BY LAW, THE TERMS OF THIS AGREEMENT AND SUBSTANTIAL EVIDENCE, AND FURTHER, THE MUTUALLY-DESIGNATED ARBITRATOR OR NEUTRAL ARBITRATOR, AS THE CASE MAY BE, SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE MAKING OF AN AWARD WHICH FAILS TO COMPLY WITH THE REQUIREMENTS OF THE

IMMEDIATELY PRECEDING SENTENCE SHALL BE DEEMED TO BE IN EXCESS OF SUCH ARBITRATOR'S POWERS AND THE COURT SHALL VACATE THE AWARD IF, AFTER REVIEW, IT DETERMINES THAT THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED.

**9.2 ARBITRATION--CONSTRUCTION STOPPAGE.**

(a) IN NO EVENT SHALL CONSTRUCTION BE STOPPED IN THE EVENT OF A CLAIM, OR DISPUTE, EXCEPT WHERE IT IS ABSOLUTELY NECESSARY (IN THE REASONABLE JUDGMENT OF THE PARTIES) TO FIRST RESOLVE THE DISPUTE IN ORDER TO BE ABLE TO CONTINUE CONSTRUCTION. IN THE EVENT THAT CONSTRUCTION IS STOPPED, AN ARBITRATOR SHALL BE IMMEDIATELY DESIGNATED PURSUANT TO SECTION 1281.6 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

(b) NO ARBITRATOR SHALL BE SELECTED WHO IS UNABLE TO HEAR THE DISPUTE WITHIN 15 DAYS AFTER BEING SELECTED). NOTWITHSTANDING SECTIONS 1282.2(B) AND 1286.2(E) OF THE CALIFORNIA CODE OF CIVIL PROCEDURE REGARDING POSTPONEMENT OF THE HEARING, WHERE CONSTRUCTION IS STOPPED, THE ARBITRATOR MAY NOT ADJOURN THE HEARING EXCEPT UPON THE STIPULATION OF ALL PARTIES TO THE ARBITRATION. IN ADDITION TO ALL OTHER ISSUES, THE ARBITRATOR SHALL ALSO DETERMINE WHETHER IT WAS ABSOLUTELY NECESSARY TO STOP CONSTRUCTION, AND IF IT WAS NOT ABSOLUTELY NECESSARY, THE PARTY WHICH CAUSED THE CONSTRUCTION STOPPAGE BECAUSE OF NECESSITY SHALL BE ENTITLED TO DAMAGES ARISING OUT OF SUCH CONSTRUCTION STOPPAGE, WHICH DAMAGES SHALL ALSO BE DETERMINED BY THE ARBITRATOR. THE AWARD OF THE ARBITRATOR SHALL BE SUPPORTED BY LAW, THE TERMS OF THIS AGREEMENT AND SUBSTANTIAL EVIDENCE, AND FURTHER, THE ARBITRATOR SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE MAKING OF AN AWARD WHICH FAILS TO COMPLY WITH THE REQUIREMENTS OF THE

IMMEDIATELY PRECEDING SENTENCE SHALL BE DEEMED TO BE IN EXCESS OF SUCH ARBITRATOR'S POWERS AND THE COURT SHALL VACATE THE AWARD IF, AFTER REVIEW, IT DETERMINES THAT THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED.

**9.3 IMPARTIALITY OF NEUTRAL ARBITRATOR.**

NO PERSON SHALL ACT AS A NEUTRAL ARBITRATOR WHO IN ANY WAY HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULTS OF THE ARBITRATION OR HAS ANY PAST OR PRESENT RELATIONSHIP WITH ANY OF THE PARTIES, THEIR COUNSEL, OR BNSF. FAILURE TO DISCLOSE ANY SUCH INTEREST OR RELATION SHALL BE GROUNDS FOR VACATING THE AWARD.

**9.4 COMPENSATION OF ARBITRATOR.**

EACH PARTY SHALL PAY THE EXPENSES AND FEES OF THE ARBITRATOR IT SELECTS. THE EXPENSES AND FEES OF THE NEUTRAL ARBITRATOR SHALL BE PAID IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1284.2 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

**9.5 DAMAGES.**

THE ARBITRATOR(S) IS(ARE) SPECIFICALLY AUTHORIZED TO AWARD MONETARY DAMAGES TO THE NON-DEFAULTING PARTY OR REQUIRE SPECIFIC PERFORMANCE OF THE TERMS OF THIS AGREEMENT BY THE DEFAULTING PARTY.

POLA \_\_\_\_\_ POLB \_\_\_\_\_ ACTA \_\_\_\_\_ UNION PACIFIC \_\_\_\_\_



**ARTICLE 10**  
**INDEMNIFICATION AND INSURANCE**

**10.1 Indemnification.**

(a) ACTA shall defend (with counsel reasonably approved by Union Pacific), indemnify and hold Union Pacific, its directors, officers, agents and employees harmless from and against any and all losses, damages, liabilities, claims, actions, demands, detriments, penalties, judgments, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and costs) and causes of action which Union Pacific may sustain on account of the loss of, damage to or destruction of property, or on account of bodily injury to or death of any persons (including, but not limited to employees, subcontractors, agents and invitees of Owner, ACTA or Union Pacific, or any other person to whom a duty of care is owed) caused by or related to ACTA's construction of the Project. The foregoing indemnity shall not apply to the extent that Union Pacific, its officers, agents or employees are responsible for the condition which caused the losses, damages, liabilities, claims, actions, demands, detriments, penalties, judgments, costs, charges or expenses.

(b) Union Pacific shall defend (with counsel reasonably approved by ACTA), indemnify and hold the Owner Indemnified Parties harmless from and against any and all losses, damages, liabilities, claims, actions, demands, detriments, penalties, judgments, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and costs) and causes of action which any of the Owner Indemnified Parties may sustain on account of the loss of, damage to or destruction of property, or on account of bodily injury to or death of any persons (including, but not limited to employees, subcontractors, agents and invitees of Owner, ACTA or Union Pacific, or any other person to whom a duty of care is owed) caused by, or related to, (i) Union Pacific's freight rail operations on the Property during construction; (ii) conditions on the Property caused by Union Pacific, its officers, agents or employees; and (iii) construction undertaken by Union Pacific (including, without limitation, construction of the Union Pacific Construction Projects and the Wilmington Branch Improvements). The foregoing indemnity shall not apply to the extent that Owner or ACTA, or their respective officers, agents

or employees, are responsible for the condition which caused the losses, damages, liabilities, claims, actions, demands, detriments, penalties, judgments, costs, charges or expenses.

(c) Wherever in this Agreement Union Pacific indemnifies Owner, such indemnification shall be deemed to refer and apply to the City of Los Angeles, the Port of Los Angeles and its Board of Harbor Commissioners, the City of Long Beach, the Port of Long Beach and its Board of Harbor Commissioners, and each of them, and their respective officers, directors, employees, commissioners, agents, successors and assigns.

#### **10.2 Insurance.**

(a) While ACTA is undertaking construction activities on the Property, it shall acquire and keep in force (and/or cause its contractor(s) to acquire and keep in force) during the period of such construction the following insurance:

(i) Commercial General Liability Insurance (including umbrella or excess liability insurance as necessary to achieve limits) for bodily injury, property damage, personal injury and advertising injury. Primary coverage shall be issued using Insurance Services Office Commercial General Liability "occurrence" form CG 0001 (or its equivalent), not excluding coverage for liability arising out of an agreement or contract in connection with construction or demolition operations on or near any railroad, with no exclusion for explosion, collapse or underground hazards. Total limits shall be no less than \$50 million per occurrence and aggregate.

(ii) Workers' compensation and employer's liability insurance covering all contractors and subcontractors for statutory benefits. Employer's liability limits shall be no less than \$1 million per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy.

In addition to the foregoing, while ACTA is conducting any construction activities on Union Pacific's property, ACTA shall acquire and keep in force during the period of such construction \$10 million (combined single limit) of Railroad Protective Liability Insurance. Any insurance required under this Section 10.2(a) shall name Union Pacific as an additional insured and shall be

issued by a responsible insurer, approved by Union Pacific in its reasonable discretion, on commercially reasonable terms and conditions. ACTA shall furnish Union Pacific with a certificate of each insurance policy obtained.

(b) If Union Pacific undertakes any construction on the Property, it shall acquire and keep in force during the period of such construction \$50 million (Combined Single Limit) of general liability insurance to cover all such construction activities undertaken by Union Pacific, which general liability policy may have a deductible or self-insured retention not to exceed \$25 million. Such insurance shall include blanket contractual coverage, including specific coverage for the indemnity provisions set forth in Section 10.1(b) above. Any insurance required under this Section 10.2(b) shall name ACTA and Owner (and any other entities designated by ACTA and Owner) as additional insureds and shall be issued by a responsible insurer, approved by ACTA in its reasonable discretion, on commercially reasonable terms and conditions. Union Pacific shall furnish ACTA with a certificate of each insurance policy obtained.

(c) Notwithstanding anything to the contrary contained in the foregoing, in recognition of the potential for changes in the insurance market and the availability and cost of insurance, the parties hereby expressly agree that, in the event that either (i) the insurance required of either party hereunder shall cease to be available (as to either limits or coverages), or (ii) such insurance shall be available only at excessive cost (in the reasonable estimation of either party), the parties shall agree upon alternative policy limits and/or coverages, as well as appropriate levels of self insurance for both parties. If the parties shall be unable to agree upon such alternative policy limits or coverages, such controversy shall be resolved by arbitration in accordance with Article 9 above.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

#### **11.1 Approvals; Further Documents.**

(a) Where this Agreement requires approval, consent, permission, satisfaction, agreement, or authorization by either party, such approval, consent, permission,

satisfaction, agreement, or authorization shall not be unreasonably withheld or delayed, except as specifically provided herein.

(b) The parties shall execute such further documents, agreements, instruments, and notices as may be necessary or appropriate to effectuate the transactions contemplated by this Agreement.

**11.2 Designated Representatives.** The parties each shall designate representatives from time to time who will be responsible for the administration and implementation of the provisions of this Agreement. More than one Designated Representative may be appointed as appropriate, but the responsibilities and authority of each Designated Representative shall be set forth in a writing signed by the party designating the Designated Representative and delivered to the other party pursuant to Section 11.3 of this Agreement. Without limiting the generality of the foregoing, Union Pacific and ACTA each shall designate a "project engineer" with the responsibility of coordinating such party's activities with respect to the Project, who shall act as the contact for and liaison with the other party in connection with the design, planning, scheduling and construction of the Project, and who shall have the authority to bind such party (subject, with respect to ACTA, to any regulations of the governing body of such entities limiting the authority of such individual) and upon whose decisions, approvals and consents the other party shall have the right to rely. Each party shall be solely responsible for the payment of the salary, benefits and other compensation to its respective Designated Representatives.

**11.3 Notices.**

(a) All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or (ii) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Union Pacific:

Union Pacific Railroad Company  
1416 Dodge Street - Room 1030  
Omaha, Nebraska 68179-1030  
Attention: Mr. W.E. Wimmer, - Vice President, Engineering  
Telecopy No. 402-271-6674  
Confirmation No. 402-271-4345

with a copy to:

Union Pacific Railroad Company  
1200 Corporate Center Drive  
Monterey Park, California 91754  
Attention: Jeff Asay, Esq.  
Telecopy No. 213-980-6889  
Confirmation No. 213-980-6500

To Owner:

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90733  
Attention: Executive Director  
Telecopy No. 310-732-0291  
Confirmation No. 310-732-3456

with a copy to:

Office of the City Attorney  
Port of Los Angeles  
425 Palos Verdes Street  
San Pedro, California 90733  
Attention: City Attorney  
Telecopy No. 310-831-9778  
Confirmation No. 310-732-3750

and

Port of Long Beach  
925 Harbor Plaza  
Long Beach, California 90801  
Attention: Executive Director  
Telecopy No. 562-901-1733  
Confirmation No. 562-570-4100

with a copy to:

Office of the City Attorney  
Port of Long Beach  
333 West Ocean Blvd., Suite 1100  
Long Beach, California 90802  
Attention: City Attorney  
Telecopy No. 562-436-1579  
Confirmation No. 562-570-2212

with a copy to:

O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, California 90071-2899  
Attention: Jack B. Hicks III, Esq.  
Telecopy No. 213-669-6407  
Confirmation No. 213-669-7263

To ACTA:

Alameda Corridor Transportation Authority  
One Pacific Plaza  
Suite 650  
Carson, California 90745  
Attention: General Manager  
Telecopy No. (310) 233-7483  
Confirmation No. (310) 233-7480

Any party may change its address for notice by delivering written notice to the other parties in the manner described above.

(b) The parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement, but each such alternate procedure shall be described in writing and signed by a Designated Representative of the parties.

#### **11.4 Billing Procedures.**

(a) Each party which incurs costs and expenses that are reimbursable by another party to this Agreement pursuant to the terms hereof shall send invoices to the other party not more often than monthly. All invoices shall be accompanied by copies of statements establishing such costs and expenses.

(b) All invoices submitted shall be paid by ACTA or Union Pacific, as the case may be, to the extent not in dispute, not later than 30 days after receipt thereof. Any such amount not paid within such 30 day period shall accrue interest of the rate of 10% from the date such invoice is delivered until the date of payment. Any amount in dispute shall be subject to Section 11.4(c) below.

(c) If any portion of an invoice is in dispute, such portions shall be negotiated by Union Pacific and ACTA in good faith. If agreement cannot be reached within 30 days, such dispute shall, at the option of either party, be subject to the procedures set forth in Article 9. No exception to any bill shall be honored, recognized or considered if filed after the expiration of two years from the last day of the calendar month during which the bill is rendered.

#### **11.5 Assignment; Binding Effect.**

(a) Owner may assign all or a portion of this Agreement, and its rights and obligations hereunder, to an entity which is comprised of Owner or in which Owner is a member (including, without limitation, Owner or another joint powers authority); provided, however, that (i) no such assignment shall release Owner from any obligations or liabilities of Owner under this Agreement unless the assignee possesses financial capabilities reasonably satisfactory to Union Pacific (and ACTA is satisfactory to Union Pacific), and (ii) any such assignee shall assume the obligations of Owner under this Agreement in the form of a written instrument reasonably satisfactory to Union Pacific. Except as set forth in the preceding sentence, the parties hereto shall not assign or transfer all or any part of their rights under this Agreement.

(b) Subject to the provisions of Section 11.5(a) above, this Agreement shall bind and inure to the benefit of the respective transferees, successors and assigns of the parties. As used in this Agreement, the terms "Owner," "ACTA" and "Union Pacific" shall also include the permitted transferees, successors and assigns of either party.

**11.6 Waiver.** The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be



or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

**11.7 Modification.** This Agreement may not be amended, modified, superseded or cancelled, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the parties.

**11.8 Time of Essence.** Time is of the essence of this Agreement and of all parts hereof. If any of the conditions or obligations in this Agreement are not timely met by Owner, ACTA or Union Pacific, then Owner, ACTA or Union Pacific, as the case may be, shall be deemed to be in default hereunder, and the non-defaulting party may, at its option, exercise its rights under Article 8.

**11.9 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.

**11.10 Gender and Tense.** As used in this Agreement, the masculine, feminine and neuter gender, and the singular or plural number shall each be deemed to include the other or others whenever the context so indicates.

**11.11 Headings.** The various paragraph headings herein are for convenience only, and shall not affect the meaning or interpretation of this Agreement or any paragraph hereof.

**11.12 Incorporation of Recitals and Exhibits.** The Recitals set forth in Article 1 of this Agreement, and every Exhibit to which reference is made in this Agreement, are hereby incorporated in this Agreement by this reference.

**11.13 Force Majeure.** Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder (except obligations involving the payment hereunder of money to the other party or to a third party), during the time when such non-performance is occasioned

by fire, earthquake, flood, mud slide, washouts, storms, blockages, explosion, wreck, derailment, mechanical breakdown, environmental conditions, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, acts of civil or military authorities, act of public enemy, embargo, war, act of God, rationing, inability to obtain government permits or approvals, inability to obtain financing or government funding, labor, materials or supplies or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions to rail operations and construction on the Property. Each party shall notify promptly the other party when the non-performance of its obligations hereunder is the result of any of the circumstances described above in this Section 11.13 and, except when the circumstances involves a labor dispute, shall use all reasonable efforts to remedy the situation. Each party shall provide the other party with periodic reports describing in reasonable detail the current condition of such circumstances for so long as such circumstance prevents the performance of an obligation required hereunder.

**11.14 Attorneys' Fees.** In any action brought to declare the rights granted herein or to enforce the provisions of any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees, costs and expenses, including fees for services rendered by a party's internal or house counsel, in any amount determined by the court or arbitrator. The provisions of this Section 11.14 shall survive the entry of any judgment.

**11.15 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**11.16 Relationship of Owner, ACTA and Union Pacific.** Notwithstanding anything to the contrary contained herein, neither this Agreement nor any of the agreements delivered pursuant to this Agreement shall be deemed or construed to make any or all of Owner, ACTA and/or Union Pacific partners or joint venturers, or to render any of them liable for any of the debts or obligations of the others unless expressly so provided in this Agreement (or such other agreements).

**11.17 No Third Party Beneficiaries.** It is the intent of each party to this Agreement that each provision of this Agreement inure only to the benefit of the parties hereto, and their permitted successors and assignees, and shall not inure to the benefit of any other person or entity (including, without limitation, any governmental or quasi-governmental agency or authority).

**11.18 Effect of Agreement.** All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Agreement or agreements expressly referenced in this Agreement or the documents executed in connection herewith. No provision of this Agreement shall be altered, amended, revoked or waived except by any instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

**11.19 Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

**11.20 Applicability of Other Agreements.** All references herein to the "design" and "construction" of the Project shall be limited to the original design and construction of the Project. After the Project is designed and constructed pursuant to the terms hereof, all future maintenance, reconstruction, repair, alteration and replacement of the Project shall be governed by the Corridor Operating Agreement and the Drill Track Operating Agreement, as the case may be.

**11.21 Corridor Operating Agreement.** Union Pacific, Owner and ACTA will negotiate reasonably and in good faith with BNSF with respect to the execution and delivery of a Corridor Operating Agreement as provided in Section 5.2(f) of the Purchase Agreement.

**11.22 Drill Track Operating Agreement.** Union Pacific and Owner will negotiate reasonably and in good faith with respect to the execution and delivery of the Drill

Track Operating Agreement containing provisions consistent with the Memorandum of Understanding attached hereto as Exhibit D.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**"UNION PACIFIC"**

**UNION PACIFIC RAILROAD  
COMPANY** (successor to  
**SOUTHERN PACIFIC  
TRANSPORTATION COMPANY**),  
a Delaware corporation

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**"POLA"**

**CITY OF LOS ANGELES**, acting by and  
through the Board of Harbor  
Commissioners of the Port of Los Angeles

**ATTEST:**

By: \_\_\_\_\_  
Larry A. Keller  
Executive Director  
Los Angeles Harbor Department

\_\_\_\_\_  
Commission Secretary  
Los Angeles Harbor Department

Approved as to form this \_\_\_\_ day of October, 1998.

**JAMES K. HAHN**, City Attorney

By: \_\_\_\_\_  
Winston F. Tyler  
Senior Assistant City Attorney

**[SIGNATURES CONTINUED ON NEXT PAGE]**

**"POLB"**

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

By: \_\_\_\_\_  
Richard D. Steinke  
Executive Director  
Long Beach Harbor Department

Approved as to form this \_\_\_\_ day of October, 1998.

**ROBERT E. SHANNON**, City Attorney

By: \_\_\_\_\_  
Richard L. Landes,  
Principal Deputy City Attorney

**"ACTA"**

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**,  
a Joint Powers Authority

By: \_\_\_\_\_  
James C. Hankla  
Chief Executive Officer

Approved as to form this \_\_\_\_ day of October, 1998.

By: \_\_\_\_\_  
Joseph Burton  
General Counsel

**EXHIBIT A**  
**TRACK SCHEMATIC DRAWINGS**

**[Drawings Attached Hereto]**



## **EXHIBIT A-1**

### **PROJECTS THAT MAY NOT BE COMPLETED AT TIME OF SUBSTANTIAL COMPLETION OF MAINLINE TRACKS**

1. ACTA projects that could affect ultimate train speeds (from north to south):
  - A. North end connection for Union Pacific across Soto Street Bridge – two tracks (one on existing bridge and one on the new bridge), radius of curves will permit train speed of 15-20 MPH.
  - B. If Union Pacific does not provide, or delays in providing, access to property previously purchased by Owner for the portion of the Rail Corridor through Dolores Yard, “slow order” train orders may be in effect.
  - C. Curve around Industrial Asphalt (Thenard Tower) – two tracks around curve, radius curve will permit train speed of approximately 15 MPH.
  - D. Long Beach Lead to Port of Long Beach (through and south of Texaco) – new two track bridge across Dominguez Channel completed with two tracks, radius of curve will permit train speed of approximately 15 MPH.
  - E. Henry Ford Avenue Grade Separation – one track at grade always in service; the two tracks on structure may not be ready, second at-grade track on east side of structure also available at all time.
2. Public Works Projects (ACTA no lead agency) that still may be under construction:
  - A. Del Amo Boulevard Grade Separation.
  - B. Sepulveda Boulevard Grade Separation.
  - C. Pacific Coast Highway Grade Separation.

**EXHIBIT B**  
**MAP OF PROPERTY**

**[Map Attached Hereto]**

## **EXHIBIT C**

### **UNION PACIFIC CONSTRUCTION PROJECTS**

1. Relocate/reconstruct within J Yard the connection of the Santa Monica Branch/Wilmington Branch to the Rail Corridor; relocate/reconstruct J Yard office, locker room and restrooms.
2. Construct two connection tracks between Dolores Yard/ICTF (inbound and outbound track) to connection with Rail Corridor at point near Dominguez Junction.
3. Construction of ICTF staging tracks between Carson Street and Dominguez Junction.
4. Construct storage track in J Yard.
5. Reconstruct ladder track at Dolores Yard at north end near Carson Street and at south end near 223rd Street.
6. Relocate yard office and related facilities at Dolores Yard.
7. Reconstruct Dolores Yard locomotive fueling facilities and related track leads.
8. Construct Drill Track south of Sepulveda Boulevard.
9. Realignment of Wilmington Branch track along extreme west side of right-of-way and construction of new connection to San Pedro Branch south of Dominguez Junction.
10. Reconfiguration of track and track connections in the south end of the portion of J Yard owned by Union Pacific.

**EXHIBIT D**  
**DRILL TRACK OPERATING AGREEMENT**  
**MEMORANDUM OF UNDERSTANDING**

**[Attached Hereto]**

MEMORANDUM OF UNDERSTANDING FOR DRILL TRACK OPERATING AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING FOR DRILL TRACK OPERATING AGREEMENT (this "Memorandum"), dated December 22, 1994, is entered into by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT"), and THE CITY OF LOS ANGELES, a municipal corporation, acting by and through THE BOARD OF HARBOR COMMISSIONERS OF THE PORT OF LOS ANGELES ("POLA"), and THE CITY OF LONG BEACH, a municipal corporation, acting by and through its BOARD OF HARBOR COMMISSIONERS ("POLB") (POLA and POLB are sometimes collectively referred to herein as "Owner"), with reference to the following Recitals:

**R E C I T A L S:**

A. Pursuant to that certain Purchase and Sale Agreement dated December 22, 1994 (the "Purchase Agreement"), by and between SPT and Owner, Owner has, on the date hereof, purchased from SPT certain real property, easements, franchises, improvements and fixtures, portions of which presently are used by SPT in connection with the operation of SPT's freight rail services between the Ports (as defined in the Purchase Agreement) and the East Bank of the Los Angeles River, all as more particularly described in the Purchase Agreement. The real property, easements, franchises, improvements and fixtures acquired by Owner pursuant to the Purchase Agreement are hereinafter collectively referred to as the "Property."

B. Concurrently herewith, SPT and Owner have entered into that certain Construction and Maintenance Agreement (the "C&M Agreement") governing, among other things, the parties' respective rights and obligations with respect to the construction of: (i) a multiple main, high density, centralized traffic controlled mainline railroad system, a portion of which may be constructed in a depressed (below existing grade) configuration or design and the remainder at grade with appropriate crossing facilities, which railroad system would connect the Ports with the East Bank of the Los Angeles River and run generally along and parallel to Alameda Street (the "Rail Corridor"), and (ii) an at-grade single-track rail line generally running adjacent and parallel to all or parts of the Rail Corridor (portions of which may consist of SPT's existing track located on the Property to the extent such existing track is not removed due to construction of the Rail Corridor) (the "Drill Track"), all as more particularly set forth and described in the C&M Agreement.

C. Pursuant to that certain Grant Deed and that certain Quitclaim Deed, both of even date herewith, executed by SPT in favor of Owner (the "Deeds"), SPT conveyed the Property to Owner and reserved therein the Reserved Rail Easement (as defined in the Deeds), the terms and provisions of which are governed by the Deeds and by that certain Interim Operating Agreement of even date herewith, by and between SPT and Owner (the "Interim Operating Agreement"). As set forth in the Purchase Agreement and the Deeds, upon construction of the Rail Corridor and the Drill Track, the

Reserved Rail Easement shall continue in effect as two separate easements such that, as set forth in the Deeds, the Reserved Rail Easement as it relates to the portion of the Property on which the Drill Track is located thereafter shall be referred to as the "Reserved Drill Track Easement" and shall be governed by the terms and provisions of a drill track operating agreement (the "Drill Track Operating Agreement").

D. Pursuant to Section 5.3 of the Purchase Agreement, the parties hereto desire to set forth the basic business terms and conditions on which they will enter into the definitive Drill Track Operating Agreement for the use, operation, maintenance and repair of the Drill Track, and set forth the guidelines on which they will negotiate and execute such definitive Drill Track Operating Agreement, all on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SPT and Owner hereby agree as follows:

#### **ARTICLE I: DEFINITIONS**

As used in this Memorandum, the following terms shall have the respective meanings set forth below:

1.1 "Burdened Portion of the Property" shall mean the portion of the Property which is encumbered by the



Reserved Drill Track Easement pursuant to the Deeds, and shall include the Trackage.

1.2 "Capital Improvements" shall mean any additions, betterments, improvements, construction, modifications and renewals of the Trackage and/or the Track Support Structures or any new facilities on the Burdened Portion of the Property, but shall not include any of such matters which are provided for in the C&M Agreement.

1.3 "Corridor Operating Agreement" shall mean that certain Corridor Operating Agreement to be entered into by and among Owner, SPT, Union Pacific Railroad Company, a Utah corporation, and The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation (if such railroad is a party to such Agreement).

1.4 "Drill Track Operating Agreement" shall mean a definitive Drill Track operating agreement and related documents to be entered into by Owner (or an affiliate of Owner which is a permitted assignee under Section 11.1(a) below) and SPT, providing for the use, operation and maintenance of the Drill Track, Trackage and Track Support Structures by SPT, which agreement shall contain terms consistent with this Memorandum, as supplemented by such other terms and conditions as are mutually agreed upon in writing by the parties.

1.5 "PPI" shall mean the Producer Price Index for all commodities (1982 = 100) published by the United States Department of Labor Statistics.

1.6 "Rail Freight Service" shall mean the common carrier transportation by rail involving operations and activities on the Drill Track permitted under the Reserved Drill Track Easement, including, without limitation, rail freight operations, maintenance of the Trackage and the Track Support Structures, the operation, use and movement of Trains across the Trackage, and the unloading and loading of such Trains, performed by SPT, its agents, representatives, contractors and employees on the Burdened Portion of the Property.

1.7 "Reserved Drill Track Easement" shall mean the freight rail service easement reserved by SPT pursuant to the Deeds.

1.8 "Trackage" shall mean railroad tracks comprising the Drill Track, including, without limitation, all signals and signal systems, interlocking devices and plants, communication facilities, main line tracks, spur tracks, lead tracks, passing tracks, and industry tracks, switches, turnouts and connections (including, without limitation, switches, turnouts and connections to and between the Drill Track and the Rail Corridor, and to and between the Drill Track and all local industry

customers), rights-of-way, terminal facilities, yards and improvements.

1.9 "Track Support Structures" shall mean the improvements, fixtures and facilities necessary for the use or support of the Trackage including, without limitation, bridges, tunnels, culverts and other structures, subgrade, embankments, dikes, pavements and drainage facilities, and specifically including any cantilevered platform portion of the Drill Track over the Rail Corridor.

1.10 "Trains" shall mean one or more freight trains, locomotives with or without cabooses, railroad freight cars, track and maintenance equipment, and all other freight rail-related machines and equipment.

## **ARTICLE II: USE OF DRILL TRACK**

2.1 **Trackage Rights.** The Drill Track shall be used exclusively (subject to any detour rights of other railroads set forth in the Corridor Operating Agreement and except in the circumstances set forth in Section 3.1(b)(i) of the C&M Agreement) by SPT solely for Rail Freight Service along the Burdened Portion of the Property in accordance with the terms of the Drill Track Operating Agreement. The Reserved Drill Track Easement shall be subject to all existing agreements, leases, licenses, easements, covenants, conditions, restrictions, franchises, assessments and

all other agreements which impact the Burdened Portion of the Property as of the Closing Date (as defined in the Purchase Agreement) or which are entered into pursuant to the Interim Operating Agreement and to which SPT is a party, whether or not such agreements, leases, licenses, easements, covenants, conditions, restrictions, franchises, assessments or other agreements are of record.

2.2 Abandonment. Notwithstanding the foregoing, SPT shall not have the right to operate its Trains or exercise its rights under the Reserved Drill Track Easement over any portion of the Burdened Portion of the Property (including switches, turnouts or connections to and between the Drill Track and the Rail Corridor and to and between the Drill Track and any local industry customers) with respect to which SPT has abandoned (or abandons) its common carrier rail freight service obligations pursuant to regulations of the Interstate Commerce Commission ("ICC"). Accordingly, if SPT ceases to operate Trains pursuant to the Reserved Drill Track Easement over the Burdened Portion of the Property or any portion thereof for a continuous period of five years, then, at the written request of Owner, SPT shall, at SPT's sole cost and expense, seek promptly and pursue diligently all regulatory and administrative approvals (including, without limitation, the approval of the ICC) which are necessary for the abandonment of SPT's Reserved Drill Track Easement over such portion of the Burdened Portion of the Property. Immediately upon the effective date of such approvals, the Reserved Drill Track

Easement shall terminate as to such portion of the Burdened Portion of the Property, and SPT thereafter shall have no further rights under the Drill Track Operating Agreement with respect to such abandoned portion of the Burdened Portion of the Property.

**2.3 Ownership of Trackage.** SPT shall own all Trackage and other improvements on the Burdened Portion of the Property constructed by SPT pursuant to the C&M Agreement, provided that, upon termination of the Drill Track Operating Agreement and the Reserved Drill Track Easement as set forth herein, title to and ownership of all such Trackage and other improvements automatically and permanently shall be transferred to Owner without the necessity of any further action on the part of any party. Nothing in the Drill Track Operating Agreement shall be construed as granting or reserving to SPT any interest or right in the Burdened Portion of the Property other than the rights expressly provided by the Drill Track Operating Agreement. SPT shall not remove any Trackage or Track Support Structures on the Burdened Portion of the Property, without Owner's prior written consent, which shall not be unreasonably withheld or delayed.

**2.4 Utilities.** SPT shall be responsible, at its sole cost and expense, for all utility charges, fees and assessments in connection with SPT's use of the Burdened Portion of the Property and Rail Freight Service.

**2.5 Use of Hi-Rail.** SPT shall allow Owner to operate hi-rail cars on the Trackage subject to reasonable rules and regulations normally applicable to such operations.

2.6 Contracts with Shippers. SPT, at SPT's sole cost and expense, may enter into agreements directly with freight shippers to provide Rail Freight Service to such freight shippers, and may construct, at SPT's sole cost and expense, on the Burdened Portion of the Property any turnout, switch or connection track necessary to provide such service, provided that Owner approves such construction, such approval not to be unreasonably withheld (which approval may take into account any interference such facilities may cause with the construction, operation and/or maintenance of the Rail Corridor).

2.7 Use of Property by Owner. Owner may allow new easement holders and licensees of Owner to construct improvements on, under or over the Burdened Portion of the Property only if both Owner and SPT are indemnified substantially to the same extent; and such admission does not materially interfere with Rail Freight Service; and SPT has had an opportunity to review and approve the plans and construction standards (which review and approval shall not be unreasonably withheld or delayed); and such parties coordinate their construction with SPT. Subject to the terms and conditions of the C&M Agreement, Owner may use the Property for storage and staging of construction materials and assembly of rail (including storage and staging of construction materials and assembly of rail in connection with construction of the interim project described in Section 11.22 of the C&M Agreement) so long as such activities do not interfere with SPT's Rail Freight Service in more than an insignificant way. So long as there is no

interference with SPT's Rail Freight Service in more than an insignificant way, Owner may lease portions of the Property (e.g., for billboards) and retain all income therefrom, and otherwise use the Property for purposes not inconsistent with and which do not interfere with SPT's Rail Freight Service in more than an insignificant way.

**2.8 Utility Lines.** SPT shall have the right to construct and maintain, at its sole cost and expense, underground utility lines through the Burdened Portion of the Property which are directly and reasonably related to SPT's Rail Freight Service, subject to the prior written permission of Owner (which shall not be unreasonably withheld or delayed). Owner agrees to grant to SPT, at no cost or consideration, permanent easements for such utilities provided such easements do not materially impair Owner's existing or reasonably contemplated use of the Property. SPT shall pay all costs relating to the use by SPT of such easements, and such easements shall be on terms reasonably acceptable to Owner (including reasonable provisions requiring SPT to (i) indemnify, defend and hold harmless Owner from and against all liabilities, losses, damages, actions, penalties, claims, demands, detriments, costs, charges, judgments and expenses which arise either directly or indirectly from the use or presence of such easements (provided such indemnity shall not cover the gross negligence or willful misconduct of Owner), and (ii) relocate the utilities, at SPT's sole cost and expense if necessary for the construction, operation and/or maintenance of the Rail Corridor under the Corridor



Operating Agreement, in Owner's reasonable discretion, or otherwise reasonably required by Owner). In addition, if SPT obtains an indemnity from any utility company or other party in connection with such easement, Owner shall be included as an indemnified party to the same extent as SPT.

### **ARTICLE III: DISPATCHING AND OPERATIONS**

3.1 **Dispatching.** Subject to the terms of any existing agreements, SPT shall have the exclusive right and obligation to dispatch and control rail freight operations on the Burdened Portion of the Property; provided, however, that any Trains crossing or operating on the Rail Corridor shall be subject to the dispatching priority and dispatching control provisions of the Corridor Operating Agreement. SPT shall perform, at its sole cost and expense, all dispatching and shall order and direct the movement of all Trains using Trackage on the Burdened Portion of the Property.

3.2 **Removal of Trains.** SPT, at its sole cost and expense, shall promptly remove and repair any SPT Train which stalls or becomes disabled on the Trackage.

3.3 **Security Services.** SPT shall be solely responsible (and Owner shall have no responsibility) for providing all security services and measures on the Burdened Portion of the Property. SPT assumes all risk of theft, vandalism or other damage to property,

loading or equipment owned or operated by SPT, its contractors, agents, representatives, employees or freight shippers.

3.4 Encroachers. SPT shall promptly use reasonable efforts to remove all encroachers from the Burdened Portion of the Property and to keep the Burdened Portion of the Property free and clear of all material debris and safety hazards. SPT shall give Owner prompt written notice with respect to any encroachers it is unable to remove from the Burdened Portion of the Property and shall reasonably cooperate with Owner (at no cost to SPT) in connection with further efforts of removal of such encroachers.

3.5 Compliance With Law and Existing Agreements. SPT shall comply, at its sole cost and expense, with (i) all applicable agreements, leases, licenses, easements, covenants, conditions, restrictions and franchises affecting the Burdened Portion of the Property as of the Closing Date, whether or not of record, (ii) any agreements, leases, licenses, easements, covenants, conditions, restrictions and franchises which are entered into pursuant to the Interim Operating Agreement and to which SPT is a party, and (iii) laws, rules, regulations and orders that are promulgated under a proper authority, and if any failure on SPT's part to so comply with any of the foregoing shall result in a fine, penalty, cost or charge being imposed or assessed on or against Owner, Owner shall give prompt notice to SPT and SPT shall promptly reimburse, defend, indemnify and hold Owner harmless with respect to such fine, penalty, cost or charge and all expenses and attorneys fees incurred in connection therewith.

3.6 Labor Protective Conditions. SPT shall be solely responsible, at its sole cost and expense, for all labor protective conditions applicable to its employees involved in SPT's Rail Freight Service.

#### ARTICLE IV: LOCOMOTIVES AND CREWS

4.1 Crews. SPT shall hire, at its sole cost and expense, all persons necessary to conduct SPT's Rail Freight Service on the Burdened Portion of the Property and to perform M&O (as hereinafter defined) with respect to the Trackage and Track Support Structures. SPT shall insure that all persons operating SPT Trains on the Burdened Portion of the Property are competent, trained, licensed and qualified for the task they are performing.

#### ARTICLE V: MAINTENANCE AND REPAIRS

5.1 Maintenance. SPT shall perform all maintenance and repair of the Track Support Structures and the trackage, structures and signals, installation of ties and ballast, and surfacing work, replacement-in-kind of existing facilities such as trackage, structures, and signals ("M&O") with respect to the Trackage on the Burdened Portion of the Property at its sole cost and expense. Owner shall have no responsibility for inspecting, maintaining, servicing or repairing the Burdened Portion of the Property or any Trains, Trackage, Track Support Structures or any other equipment

used by SPT on the Burdened Portion of the Property. The M&O of the Trackage and Track Support Structures shall be under the exclusive direction and control of SPT; provided, however, that all Trains, Trackage, Track Support Structures and other equipment used by SPT will comply with all applicable FRA, Federal, State and local laws, rules and regulations and shall be maintained at least to the standard which exists as of the date of execution of the Drill Track Operating Agreement, and provided further that the condition of the Trackage or the Track Support Structures, the maintenance or repair thereof, and/or SPT's failure to repair or maintain the same, shall not materially interfere with or impact the use, operation or maintenance of the Rail Corridor (and, to the extent that any of the foregoing increase the costs of maintaining, repairing or operating the Rail Corridor, SPT shall be responsible for such increased costs). SPT shall not have any obligation to make or pay for Capital Improvements unless required by (i) the Drill Track Operating Agreement, (ii) a governmental agency other than Owner (and, for purposes of this Section 5.1, the City of Los Angeles and the City of Long Beach, acting other than through or at the request of their respective Boards of Harbor Commissioners, shall be deemed to be a "governmental agency other than Owner"), (iii) existing agreements, or (iv) law, or unless such Capital Improvement is requested or undertaken by SPT or deemed necessary or desirable by SPT for the safe or efficient use of the Trackage and/or the Track Support Structures or is otherwise necessary for SPT to meet its common carrier rail service obligations (in all of

such cases, SPT shall pay for such Capital Improvements at its sole cost and expense). SPT shall advise Owner of any contemplated Capital Improvements with respect to the Trackage and/or Track Support Structures, which Capital Improvements shall be subject to the approval of Owner, such approval not to be unreasonably withheld. Notwithstanding any of the foregoing, to the extent that any addition, betterment, improvement, construction, modification and/or renewal of any portion of the Rail Corridor will necessitate or result in a Capital Improvement, SPT shall pay the cost of such Capital Improvement, provided, however, if SPT has constructed any portion of the Drill Track after approval of the 100% Review Plans (as defined in the C&M Agreement) for the Rail Corridor, and a Capital Improvement thereafter is needed because of a change in the design of the Rail Corridor from that shown in such 100% Review Plans, then the cost of such Capital Improvement shall be borne by parties other than SPT. SPT acknowledges that any approval by or consent of POLA and/or POLB which may be given pursuant to this Memorandum or the Drill Track Operating Agreement with respect to the subject matter hereof or thereof shall not be deemed or construed as eliminating or reducing SPT's obligation to obtain any licenses, permits, approvals, franchises or entitlements which may be necessary or required from the City of Los Angeles or the City of Long Beach (as the case may be), or from departments or agencies thereof other than POLA and POLB.

**5.2 Ownership of Replacement Facilities.** In the performance of M&O and Capital Improvements to the Trackage and/or

Track Support Structures, all replacements, substitute items, product of Capital Improvements installed by SPT on the Trackage or in connection with the Trackage and/or Track Support Structures shall become a part of the Trackage and/or Track Support Structures (as the case may be). All salvage due to replacement or repairs on the Burdened Portion of the Property during the term of the Drill Track Operating Agreement by SPT shall become the property of SPT, its successors and assigns.

5.3 At-Grade Crossings. SPT, at its sole cost and expense, shall be responsible for the installation, maintenance and repair of all pedestrian or vehicular road crossing protection along the Drill Track and which run over, under, or across the Trackage or relate to any improvement, modification or alteration of pedestrian or vehicular road crossings or road crossing protection on the Burdened Portion of the Property.

5.4 Entry on to Property. Subject to the terms of the C&M Agreement, SPT shall have the right to enter upon any portion of the Burdened Portion of the Property in connection with performance of its duties and/or exercise of its rights herein. In exercising its rights under this Article 5, SPT shall use reasonable efforts to minimize any impediment, disruption or delay in the operations of the Rail Corridor under the Corridor Operating Agreement.

## ARTICLE VI: USE FEE

6.1 Use Fee. SPT shall pay \$5,000 per mile of Drill Track, annually in advance, for the use of the Burdened Portion of the Property and the exercise of its rights under the Drill Track Operating Agreement (provided, however, if pursuant to Section 3.1(b)(i) of the C&M Agreement the portion of the Drill Track from Dominguez Junction to Sepulveda Boulevard is used as a portion of the Rail Corridor, no use fee shall be payable for that portion of the Drill Track in any year in which that portion of the Drill Track is so used as part of the Rail Corridor). Such use fee shall be adjusted from the date hereof until the date that the Drill Track Operating Agreement goes into effect by an amount equal to the use fee set forth in the preceding sentence multiplied by a fraction, the numerator of which is the PPI on the effective date of the Drill Track Operating Agreement and the denominator of which is the PPI on the date hereof, and the use fee thereafter shall be adjusted every five years (compounded to take into account changes in the PPI from each previous year during such five year period) on the anniversary of the effective date of the Drill Track Operating Agreement in accordance with the change in the PPI from the date of the previous adjustment.



## ARTICLE VII: LIABILITY; INSURANCE

### 7.1 Property Damage, Personal Injury; General Liability.

SPT agrees to indemnify, defend and save harmless Owner and each of them and their respective officers, directors, employees, successors and assigns for or on account of any liabilities, losses, actions, penalties, demands, detriments, claims, damages, costs, charges, and judgments and all reasonable expenses incurred in connection therewith (including, without limitation, costs of investigation, attorneys' fees, expenses of arbitration, trial or appeal, judgments, claims made under the Federal Employer's Liability Act) which may result directly or indirectly from any act or omission of SPT or its tenants, employees, agents, contractors, invitees, shippers or third parties proximately relating to the Burdened Portion of the Property, Rail Freight Service or the Drill Track Operating Agreement, including but not limited to liabilities, losses, actions, penalties, detriments, demands, claims, damages, costs, charges and judgments for (i) damage to property, (ii) injury to or death of any person which may result from SPT's Rail Freight Service, (iii) a breach by SPT of the terms of the Drill Track Operating Agreement or any other agreement affecting or governing the Burdened Portion of the Property, or of any law, ordinance or regulation, or a failure by SPT to obtain or maintain any license, permit, franchise or other governmental approval required by law, or the failure of SPT to comply with its common carrier rail freight obligations, or (iv) the presence

during the term hereof of SPT, its affiliates, subsidiaries, employees, agents, contractors, invitees or shippers, or SPT Trains or equipment on or around the Burdened Portion of the Property, the Trackage or the Track Support Structures, it being understood and agreed that all risk of such liabilities, losses, actions, penalties, demands, detriments, claims, damages, costs, charges and judgments shall be and is hereby assumed by SPT, except to the extent such liabilities, losses, actions, penalties, demands, detriments, claims, damages, costs, charges and judgments are the result of Owner's gross negligence or willful misconduct, or in the case of any invitee of Owner, the negligence of such invitee. Such indemnity provisions shall survive the termination of the Drill Track Operating Agreement. Wherever in this Memorandum SPT indemnifies Owner, such indemnification shall be deemed to refer and apply to the City of Los Angeles, the Port of Los Angeles and its Board of Harbor Commissioners, the City of Long Beach, the Port of Long Beach and its Board of Harbor Commissioners, and each of them, and their respective officers, directors, employees, commissioners, agents, successors and assigns.

**7.2 Environmental Liability.** SPT agrees that it shall not release any Hazardous Materials (as defined in the Interim Operating Agreement) on the Property and shall comply, at its sole cost and expense, with all Environmental Laws in connection with its Rail Freight Service or SPT's use of the Burdened Portion of the Property. SPT shall indemnify, defend and hold Owner harmless from and against any Environmental Losses (as defined in the

Interim Operating Agreement) arising or occurring during the term of the Drill Track Operating Agreement. SPT shall promptly send copies to Owner of any material notice, information or request for information it receives with respect to Hazardous Materials on, in or under the Burdened Portion of the Property. Such indemnity provisions shall survive the termination of the Drill Track Operating Agreement.

7.3 Insurance. During the term of the Drill Track Operating Agreement, SPT shall, at its sole cost and expense, maintain general liability insurance in an amount equal to at least \$100,000,000 on a claims-made basis. SPT can, however, self-insure to levels customary in the industry for Class I railroads (but no more than \$10,000,000 unless modified below). Such insurance amounts shall be subject to renegotiation in the manner set forth in Section 8.2 of the Interim Operating Agreement. The general liability insurance obtained by SPT shall comply with the standards set forth in Section 8.2 of the Interim Operating Agreement.

#### ARTICLE VIII: PAYMENT OF TAXES AND ASSESSMENTS

8.1 Taxes. SPT shall promptly pay all ad valorem property taxes and assessments, all bonded indebtedness incurred by SPT, all license fees and other charges, if any, properly levied or assessed against SPT's interest arising under the Drill Track Operating Agreement in the Trackage, the Track Support Structures or Rail Freight Service, subject to SPT's right to contest the same

as provided by law and provided that SPT conducts such contest, and indemnifies Owner, in accordance with the provisions of Section 9.2 of the Interim Operating Agreement.

#### **ARTICLE IX: OWNER NOT A CARRIER**

**9.1 Common Carrier Obligations.** In the exercise of its rights under the Drill Track Operating Agreement, and subject to the terms thereof, SPT expressly retains the permanent right (subject to the provisions hereof) and obligation to perform any and all duties, responsibilities and obligations arising under the Interstate Commerce Act which relate to or require SPT to fulfill its common carrier responsibilities of serving its existing and future rail shippers, it being understood and agreed that nothing set forth in this Memorandum or the Drill Track Operating Agreement shall be construed to obligate, require, or permit Owner to assume, adopt or acquire (and Owner does not assume, adopt or acquire) any duties, liabilities, responsibilities or obligations to provide any rail freight services whatsoever to any of SPT's current or future shippers located on or along the Burdened Portion of the Property.

#### **ARTICLE X: DEFAULT AND REMEDIES**

**10.1 Default.** The parties acknowledge that in the event of a default or breach of any of the terms of the Drill Track Operating Agreement, damages may not be an adequate remedy, and

either party may seek the entry of decrees for specific performance in favor of such party. If either party defaults or breaches any of its obligations under this Memorandum or the Drill Track Operating Agreement, such party shall have 30 days to cure any default following receipt of written notice from the non-defaulting or non-breaching party. If such cure can reasonably be expected to take more than 30 days, the breaching or defaulting party shall be deemed to have effectuated a cure if it commences such cure within 30 days of notice and proceeds to complete all activities necessary and does in fact complete such cure using due diligence; provided, however, that this sentence shall not apply to the payment of rent. The parties agree that their remedies under the Drill Track Operating Agreement shall consist of actual damages, specific performance or in the case of a material default, termination. Non-payment of rent which continues beyond the cure period shall be a material default. Such provisions shall survive the termination of the Drill Track Operating Agreement.

**10.2 Remedies.** After the occurrence of a default or breach of the terms of the Drill Track Operating Agreement by SPT and the failure of SPT to cure such default or breach within the cure periods set forth in Section 10.1 above, in addition to any other remedies Owner has at law, in equity or under the terms of the Drill Track Operating Agreement, and provided that the ICC or the then current applicable judicial or administrative body has determined that (i) a continuation of Rail Freight Service is in the public interest and (ii) the transfer of common carrier Rail

Freight Service rights to a replacement operator to be appropriate, Owner, in its sole discretion, shall have the right to require the transfer of the Reserved Drill Track Easement, on terms and conditions acceptable to Owner, to the replacement freight service operator (which may be Owner) approved by the ICC or the then applicable judicial or administrative body. Upon such transfer of the Reserved Drill Track Easement, SPT shall (i) immediately cease all Rail Freight Service on the Burdened Portion of the Property; (ii) remove, within 30 days of the termination of the Drill Track Operating Agreement, all Trains and other equipment owned by SPT from the Burdened Portion of the Property; and (iii) vacate and surrender, within 30 days of the termination of the Drill Track Operating Agreement, the Burdened Portion of the Property to Owner.

**10.3 Arbitration.** With respect to the appropriate insurance increase under Section 7.3(c) above, Owner and SPT agree to submit any dispute to binding arbitration in accordance with the terms of Section 11 of the Interim Operating Agreement.

## **ARTICLE XI: MISCELLANEOUS MATTERS**

### **11.1 Assignment.**

(a) The qualifications and reputation of the parties hereto are material inducements to the other parties in entering into this Memorandum and agreeing to enter into the Drill Track Operating Agreement. Therefore, no party may assign its rights or delegate its duties under this Memorandum without the prior written consent of the other parties. Notwithstanding the

foregoing, Owner may assign its rights under this Memorandum to, and the Drill Track Operating Agreement may be executed by, an entity which is comprised of Owner or in which Owner is a member (including, without limitation, a joint powers authority) and which acquires all of the Burdened Portion of the Property; provided, however, that any such assignee shall assume the obligations of Owner under this Memorandum in the form of a written instrument reasonably satisfactory to SPT.

(b) SPT may transfer or assign its rights in connection with the Reserved Drill Track Easement and the Drill Track Operating Agreement on the terms and conditions, and pursuant and subject to the provisions set forth in the Deeds. Except as expressly set forth in this Section 11.1, SPT shall have no right to assign or transfer any of its rights reserved under the Reserved Drill Track Easement or its rights under the Drill Track Operating Agreement (including, without limitation, the transfer of trackage rights).

**11.2 Notices.** All notices and other communications under this Memorandum and the Drill Track Operating Agreement shall be delivered in accordance with the provisions of Section 12 of the Interim Operating Agreement.

**11.3 Delivery of Notices By SPT.** SPT shall promptly deliver copies to Owner of all material notices, correspondence and information it receives from any governmental agency, tenant, licensee, easement holder, freight shipper, UP or Santa Fe in connection with the condition and maintenance of the Trackage and



the Burdened Portion of the Property. Within 45 days after the end of each calendar quarter, SPT shall provide Owner with a report setting forth the number of freight cars delivered or received by each customer receiving or delivering freight from the Burdened Portion of the Property.

**11.4 GOVERNING LAW.** THIS MEMORANDUM AND THE DRILL TRACK OPERATING 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.

**11.5 Headings.** The article and section headings in this Memorandum are for convenience only and shall not be used in the interpretation or considered part of this Memorandum.

**11.6 Severability.** If any clause or provision of this Memorandum is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Memorandum shall not be affected but shall remain in full force and effect.

**11.7 Time.** Time shall be of the essence of this Memorandum and the Drill Track Operating Agreement.

**11.8 Exhibits and Recitals.** All Recitals herein and exhibits attached hereto are incorporated herein by this reference.

**11.9 Interpretation.** The language in all parts of this Memorandum shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto for any reason (including, without limitation, by virtue of

the fact that this Memorandum may have been drafted or prepared by counsel for one of the parties, it being recognized that all parties hereto, and their respective counsel, contributed materially and substantially to the preparation of this Memorandum).

**11.10 Modification.** This Memorandum may not be amended, modified, superseded or cancelled, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the parties.

**11.11 Attorneys' Fees.** In any action brought to declare the rights granted herein or to enforce the provisions of any of the terms of this Memorandum, the prevailing party shall be entitled to an award of reasonable attorneys' fees, costs and expenses, including fees for services rendered by a party's internal or house counsel, in any amount determined by the court or arbitrator. This provisions of this Section 11.11 shall survive the entry of any judgment.

**11.12 Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**11.13 Relationship of Owner and SPT.** Nothing contained in this Memorandum or the Drill Track Operating Agreement shall be deemed or construed to make Owner and SPT partners or joint venturers, or to render either liable for any of the debts or

obligations of the other unless expressly so provided in this Memorandum or the Drill Track Operating Agreement.

**11.14 No Third Party Beneficiaries.** It is the intent of each party to this Memorandum and the Drill Track Operating Agreement that each provision of this Memorandum and the Drill Track Operating Agreement inure only to the benefit of the parties hereto, and their permitted successors and assignees, and shall not inure to the benefit of any other person.

## **ARTICLE XII: EFFECT OF MEMORANDUM**

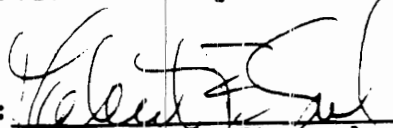
**12.1 Effect of Memorandum.** Each of the parties hereto covenants and agrees that (i) it intends that the terms and provisions of this Memorandum shall be binding on each other in negotiating the Drill Track Operating Agreement, (ii) it will cooperate in good faith and with all due diligence to negotiate and agree upon all of the terms and provisions of the Drill Track Operating Agreement as soon as possible after the date hereof (provided that SPT acknowledges that the Drill Track Operating Agreement shall be subject to the approval of Los Angeles City Council and if such approval is not obtained, then the Drill Track Operating Agreement shall not be binding on SPT or Owner), and, in connection therewith, each party agrees that it will comment in writing on any draft of the Drill Track Operating Agreement within 30 days after its receipt thereof, and (iii) will not take a position in any negotiations for the Drill Track Operating

Agreement that is inconsistent with or contrary to the terms and provisions of this Memorandum.

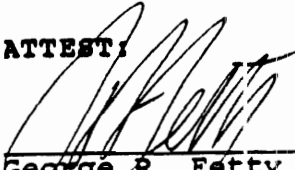
IN WITNESS WHEREOF, the parties to this Memorandum have duly executed it as of this day and year first above written.

"SPT"

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY,  
a Delaware Corporation

By:   
Robert F. Starzel  
Vice Chairman

ATTEST:


  
George R. Fetty  
Assistant Secretary

"POLA"

CITY OF LOS ANGELES, acting by and  
through the Board of Harbor  
Commissioners of the Port of  
Los Angeles

By:   
Executive Director  
Los Angeles Harbor Department

Dated December 28, 1994

Attest:   
Commission Secretary  
Los Angeles Harbor Department

Approved as to form this 28<sup>th</sup> day of December, 1994.

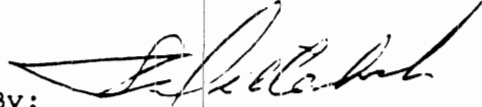
JAMES K. HAHN, City Attorney

By:   
Assistant/Deputy

[SIGNATURES CONTINUED ON NEXT PAGE]

"POLB"

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

By:   
Executive Director  
Long Beach Harbor Department

Approved as to form this 2<sup>nd</sup> day of December, 1994.

JOHN R. CALHOUN, City Attorney

By:   
Deputy

## EXHIBIT E

### **EXAMPLE OF CALCULATING CHARGE FOR TRANSPORTATION OF MATERIALS**

Any construction material used in connection with the Project (whether by ACTA or a contractor of ACTA) which will be transported to the Property by Union Pacific pursuant to Section 4.11 of this Agreement will be transported at a cost (which cost shall be paid by ACTA to Union Pacific) to be determined as the product of (a) Union Pacific's variable cost for such transportation between the applicable destination points, times (b) 1.15. Union Pacific's variable costs shall be established by using Old SPT's URCS (Uniform Railroad Costing System) data as prescribed by the ICC in Ex Parte 431 (Sub-No. 1) Adoption of the Uniform Railroad Costing System As a General Costing System For All Regulatory Costing Purposes (served September 20, 1989) and published by the ICC. Union Pacific will provide ACTA reasonably detailed information regarding Union Pacific's calculation of its variable cost for a given transportation movement and, if ACTA disagrees with Union Pacific's calculation, and ACTA and Union Pacific are unable to resolve such disagreement, then the parties shall submit their disagreement to arbitration pursuant to Section 9 of the Agreement.

**EXHIBIT F**  
**FORM OF POLB NOTE**

**[Attached Hereto]**



PROMISSORY NOTE

UNITED STATES OF AMERICA

No. 1

CITY OF LONG BEACH, CALIFORNIA  
HARBOR DEPARTMENT SUBORDINATED REVENUE NOTE, SERIES 1994 --  
SOUTHERN PACIFIC TRANSPORTATION COMPANY

REGISTERED OWNER: SOUTHERN PACIFIC TRANSPORTATION COMPANY

MATURITY DATE: DECEMBER 31, 1995

PRINCIPAL AMOUNT: FIVE MILLION DOLLARS

ISSUE DATE: DECEMBER 29, 1994

THE CITY OF LONG BEACH, a municipal corporation situated in the County of Los Angeles, State of California (the "City"), acting by and through its Board of Harbor Commissioners (hereinafter called the "Board"), FOR VALUE RECEIVED, hereby promises to pay, solely from Subordinated Revenues, as hereinafter provided, to the registered owner named above, or registered assigns, on the maturity date the principal amount set forth above; provided that if the maturity date falls on a day other than a day on which the City is open for regular business and banks in the State of California are not authorized to be closed (a "Business Day"), payment shall be made on the next succeeding Business Day. This Note shall be non-interest bearing, provided however that any principal not paid on such maturity date or the next Business Day, as the case may be, shall bear interest from such date until the date the same is paid at twelve percent (12%) per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months). The principal of this Note and any interest hereon are payable in lawful money of the United States of America. The principal of this Note shall be payable to the registered owner hereof upon presentation and surrender of this Note at the office of the Treasurer of the City (the "Treasurer"). Interest, if any, on this Note is payable upon demand to the registered owner hereof.

This Note is one of a duly authorized issue of City of Long Beach, California, Harbor Department Subordinated Revenue Notes, Series 1994 -- Southern Pacific Transportation Company issued in the aggregate principal

amount of \$33,000,000 pursuant to Article XII of the City Charter, Title 3, Chapter 3.52, Division I of the Municipal Code of the City (as amended), certain provisions of the Revenue Bond Law of 1941, Section 54300, et seq., of the Government Code of the State of California (said Article of the Charter, said provisions of the Municipal Code of the City and said provisions of the Government Code are referred to herein as the "Law") and Resolution No. HD-1739 of the Board of Harbor Commissioners of the City adopted by the Board on December 12, 1994 (the "Resolution"). The Notes are being issued in connection with the acquisition of certain property and various construction, maintenance and other services from Southern Pacific Transportation Company (the "Project"). Reference is hereby made to the Resolution, and to the Law for a description of the terms on which this Note is issued, the provisions with regard to the nature and extent of the Subordinated Revenues, and all of the terms of the Resolution and the Law are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Note, and by acceptance hereof the registered owner of this Note assents to said terms and conditions. The Resolution is adopted under, and this Note is issued under, and the Resolution and the Note are to be construed in accordance with, the laws of the State of California.

The Note is a special limited obligation of the City payable from and secured by a pledge of a lien and charge upon the Subordinated Revenues and is subordinate to all Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (all as defined in the Resolution) now existing or hereafter incurred or issued. The principal of and interest on the Note is not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Subordinated Revenues. The general fund of the City is not liable for the payment of the Note or its interest, nor is the credit or the taxing power of the City or the forfeiture of any of its property for the payment of this Note or any interest hereon.

As used herein, "Revenues" means all revenues, and all money secured or collected from or arising out of the use or operation of the Port of Long Beach or arising from the Port of Long Beach, including, without limitation, all tolls, charges, rentals, compensations or fees required to be paid for services, franchises or licenses, as permitted or required by the City Charter or otherwise by law, ordinance or order, to the City for the operation of any public service utility upon lands and waters under the

control and management of the Board and all investment earnings credited to the Harbor Revenue Fund (created by the Law) and not required to be deposited to a sub-fund, excepting therefrom any revenues arising from any lease, contract or other agreement providing for the drilling for, developing, producing, extracting, taking or removing, storing and disposing of oil, gas or other hydrocarbon substances from the tide and submerged lands granted to the City by the State. As used herein, "Port of Long Beach" means the entire harbor system subject to and under the jurisdiction of the Board as defined in the City Charter, and including, without limitation, all harbor or port improvements, work, utilities, appliances, facilities and water craft, owned, controlled or operated by the City in or upon or pertaining to the waterfront or navigable waters of the City as such system now exists together with all additions acquired, constructed or financed with funds derived from the sale of indebtedness authorized by the Board, together with all improvements and extensions to said system later constructed or acquired. As used herein, "Subordinated Revenues" means those Revenues remaining after payment or provision therefor of obligations now existing or hereafter issued or incurred secured by Revenues and payable from the Harbor Revenue Fund, including, without limitation, Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (as defined in the Resolution) (all as now existing or hereafter incurred or issued).

This Note shall be subject to call and redemption prior to maturity at the option of the Board, on any date between December 31, 1994 and February 28, 1995, inclusive, and at no time thereafter, in whole or in part, at a redemption price equal to the present value of this Note on the redemption date calculated using a discount rate of six percent (6%) per annum. The Treasurer shall provide notice of redemption of this Note and such notice shall be mailed not less than fifteen (15) nor more than thirty (30) days prior to the redemption date to the owner hereof. The notice of redemption shall state the date of such notice, the date of issue of this Note, the redemption date, the redemption price, the place of redemption (which shall be the office of the Treasurer in Long Beach, California), the maturity, and, if this Note shall be redeemed in part only, the respective portion of the principal amount hereof to be redeemed. This Note or portion hereof so called for redemption shall become due and payable on the redemption date specified in the notice at the redemption price hereof. Failure of the owner hereof to receive notice of

redemption or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

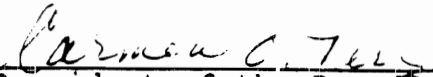
If payment is not made when due under that certain Note of Southern Pacific Transportation Company, dated December 22, 1994 in the aggregate principal amount of \$7,500,000 (the "SPT Note"), the City may set off and deduct from payment of the Notes maturing December 31, 1998 an amount equal to the sum not paid under the SPT Note, any such set-off and deduction to be allocated pro-rata among such Notes based on the principal amount thereof.

This Note may be transferred without charge upon the register required to be kept by the Treasurer, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of this Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Treasurer. Whenever this Note is surrendered for transfer, the City shall execute, authenticate and deliver a new Note of the same tenor and maturity and for a like aggregate principal amount. This Note may be exchanged at the office of the Treasurer for a like aggregate principal amount of other subordinated revenue notes of the same tenor and maturity in authorized denominations of \$5,000,000 and increments of \$50,000 in excess thereof. The Treasurer may require the owner of this Note requesting transfer of registration or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer of registration or exchange.

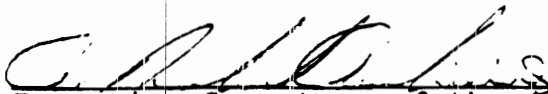
This Note shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been executed and dated by the Treasurer.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of California and that this Note, together with all other indebtedness of the City does not exceed any limit prescribed by the Constitution and laws of the State of California and the City Charter and is not in excess of the amount of the Note permitted to be issued under the Resolution.

IN WITNESS WHEREOF, the Board has caused this Note to be signed by the President of the Board of Harbor Commissioners, and the Executive Secretary of the Board of Harbor Commissioners by their facsimile or manual signatures, and sealed with the facsimile or manual corporate seal of said City as of the date specified above.

  
\_\_\_\_\_  
President of the Board of  
Harbor Commissioners of the  
City of Long Beach, California

COUNTERSIGNED

  
\_\_\_\_\_  
Executive Secretary of the  
Board of Harbor Commissioners  
of the City of Long Beach,  
California

TREASURER'S CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Note is delivered pursuant to the within  
mentioned Resolution.

  
\_\_\_\_\_  
Treasurer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby  
sell, assign and transfer unto

\_\_\_\_\_  
the within-mentioned registered Note and hereby irrevocably  
constitute(s) and appoint(s) \_\_\_\_\_  
attorney, to transfer the same on the books of the  
Treasurer with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Note: The signature(s) to this Assignment must correspond  
with the name(s) as written on the face of the within Note  
in every particular, without alteration or enlargement or  
any change whatsoever.

PROMISSORY NOTE

UNITED STATES OF AMERICA

No. 2

CITY OF LONG BEACH, CALIFORNIA  
HARBOR DEPARTMENT SUBORDINATED REVENUE NOTE, SERIES 1994 --  
SOUTHERN PACIFIC TRANSPORTATION COMPANY

REGISTERED OWNER: SOUTHERN PACIFIC TRANSPORTATION COMPANY

MATURITY DATE: DECEMBER 31, 1996

PRINCIPAL AMOUNT: FIVE MILLION DOLLARS

ISSUE DATE: DECEMBER 29, 1994

THE CITY OF LONG BEACH, a municipal corporation situated in the County of Los Angeles, State of California (the "City"), acting by and through its Board of Harbor Commissioners (hereinafter called the "Board"), FOR VALUE RECEIVED, hereby promises to pay, solely from Subordinated Revenues, as hereinafter provided, to the registered owner named above, or registered assigns, on the maturity date the principal amount set forth above; provided that if the maturity date falls on a day other than a day on which the City is open for regular business and banks in the State of California are not authorized to be closed (a "Business Day"), payment shall be made on the next succeeding Business Day. This Note shall be non-interest bearing, provided however that any principal not paid on such maturity date or the next Business Day, as the case may be, shall bear interest from such date until the date the same is paid at twelve percent (12%) per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months). The principal of this Note and any interest hereon are payable in lawful money of the United States of America. The principal of this Note shall be payable to the registered owner hereof upon presentation and surrender of this Note at the office of the Treasurer of the City (the "Treasurer"). Interest, if any, on this Note is payable upon demand to the registered owner hereof.

This Note is one of a duly authorized issue of City of Long Beach, California, Harbor Department Subordinated Revenue Notes, Series 1994 -- Southern Pacific Transportation Company issued in the aggregate principal

amount of \$33,000,000 pursuant to Article XII of the City Charter, Title 3, Chapter 3.52, Division I of the Municipal Code of the City (as amended), certain provisions of the Revenue Bond Law of 1941, Section 54300, et seq., of the Government Code of the State of California (said Article of the Charter, said provisions of the Municipal Code of the City and said provisions of the Government Code are referred to herein as the "Law") and Resolution No. HD-1739 of the Board of Harbor Commissioners of the City adopted by the Board on December 12, 1994 (the "Resolution"). The Notes are being issued in connection with the acquisition of certain property and various construction, maintenance and other services from Southern Pacific Transportation Company (the "Project"). Reference is hereby made to the Resolution, and to the Law for a description of the terms on which this Note is issued, the provisions with regard to the nature and extent of the Subordinated Revenues, and all of the terms of the Resolution and the Law are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Note, and by acceptance hereof the registered owner of this Note assents to said terms and conditions. The Resolution is adopted under, and this Note is issued under, and the Resolution and the Note are to be construed in accordance with, the laws of the State of California.

The Note is a special limited obligation of the City payable from and secured by a pledge of a lien and charge upon the Subordinated Revenues and is subordinate to all Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (all as defined in the Resolution) now existing or hereafter incurred or issued. The principal of and interest on the Note is not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Subordinated Revenues. The general fund of the City is not liable for the payment of the Note or its interest, nor is the credit or the taxing power of the City or the forfeiture of any of its property for the payment of this Note or any interest hereon.

As used herein, "Revenues" means all revenues, and all money secured or collected from or arising out of the use or operation of the Port of Long Beach or arising from the Port of Long Beach, including, without limitation, all tolls, charges, rentals, compensations or fees required to be paid for services, franchises or licenses, as permitted or required by the City Charter or otherwise by law, ordinance or order, to the City for the operation of any public service utility upon lands and waters under the



control and management of the Board and all investment earnings credited to the Harbor Revenue Fund (created by the Law) and not required to be deposited to a sub-fund, excepting therefrom any revenues arising from any lease, contract or other agreement providing for the drilling for, developing, producing, extracting, taking or removing, storing and disposing of oil, gas or other hydrocarbon substances from the tide and submerged lands granted to the City by the State. As used herein, "Port of Long Beach" means the entire harbor system subject to and under the jurisdiction of the Board as defined in the City Charter, and including, without limitation, all harbor or port improvements, work, utilities, appliances, facilities and water craft, owned, controlled or operated by the City in or upon or pertaining to the waterfront or navigable waters of the City as such system now exists together with all additions acquired, constructed or financed with funds derived from the sale of indebtedness authorized by the Board, together with all improvements and extensions to said system later constructed or acquired. As used herein, "Subordinated Revenues" means those Revenues remaining after payment or provision therefor of obligations now existing or hereafter issued or incurred secured by Revenues and payable from the Harbor Revenue Fund, including, without limitation, Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (as defined in the Resolution) (all as now existing or hereafter incurred or issued).

This Note shall be subject to call and redemption prior to maturity at the option of the Board, on any date between December 31, 1994 and February 28, 1995, inclusive, and at no time thereafter, in whole or in part, at a redemption price equal to the present value of this Note on the redemption date calculated using a discount rate of six percent (6%) per annum. The Treasurer shall provide notice of redemption of this Note and such notice shall be mailed not less than fifteen (15) nor more than thirty (30) days prior to the redemption date to the owner hereof. The notice of redemption shall state the date of such notice, the date of issue of this Note, the redemption date, the redemption price, the place of redemption (which shall be the office of the Treasurer in Long Beach, California), the maturity, and, if this Note shall be redeemed in part only, the respective portion of the principal amount hereof to be redeemed. This Note or portion hereof so called for redemption shall become due and payable on the redemption date specified in the notice at the redemption price hereof. Failure of the owner hereof to receive notice of

redemption or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

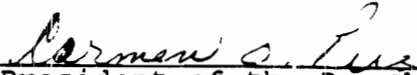
If payment is not made when due under that certain Note of Southern Pacific Transportation Company, dated December 22, 1994 in the aggregate principal amount of \$7,500,000 (the "SPT Note"), the City may set off and deduct from payment of the Notes maturing December 31, 1998 an amount equal to the sum not paid under the SPT Note, any such set-off and deduction to be allocated pro-rata among such Notes based on the principal amount thereof.

This Note may be transferred without charge upon the register required to be kept by the Treasurer, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of this Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Treasurer. Whenever this Note is surrendered for transfer, the City shall execute, authenticate and deliver a new Note of the same tenor and maturity and for a like aggregate principal amount. This Note may be exchanged at the office of the Treasurer for a like aggregate principal amount of other subordinated revenue notes of the same tenor and maturity in authorized denominations of \$5,000,000 and increments of \$50,000 in excess thereof. The Treasurer may require the owner of this Note requesting transfer of registration or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer of registration or exchange.


This Note shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been executed and dated by the Treasurer.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of California and that this Note, together with all other indebtedness of the City does not exceed any limit prescribed by the Constitution and laws of the State of California and the City Charter and is not in excess of the amount of the Note permitted to be issued under the Resolution.

IN WITNESS WHEREOF, the Board has caused this Note to be signed by the President of the Board of Harbor Commissioners, and the Executive Secretary of the Board of Harbor Commissioners by their facsimile or manual signatures, and sealed with the facsimile or manual corporate seal of said City as of the date specified above.

  
\_\_\_\_\_  
President of the Board of  
Harbor Commissioners of the  
City of Long Beach, California

COUNTERSIGNED

  
\_\_\_\_\_  
Executive Secretary of the  
Board of Harbor Commissioners  
of the City of Long Beach,  
California

**TREASURER'S CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Note is delivered pursuant to the within  
mentioned Resolution.

  
\_\_\_\_\_  
Treasurer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby  
sell, assign and transfer unto

\_\_\_\_\_  
the within-mentioned registered Note and hereby irrevocably  
constitute(s) and appoint(s) \_\_\_\_\_  
attorney, to transfer the same on the books of the  
Treasurer with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Note: The signature(s) to this Assignment must correspond  
with the name(s) as written on the face of the within Note  
in every particular, without alteration or enlargement or  
any change whatsoever.

PROMISSORY NOTE

UNITED STATES OF AMERICA

No. 3

CITY OF LONG BEACH, CALIFORNIA.  
HARBOR DEPARTMENT SUBORDINATED REVENUE NOTE, SERIES 1994 --  
SOUTHERN PACIFIC TRANSPORTATION COMPANY

REGISTERED OWNER: SOUTHERN PACIFIC TRANSPORTATION COMPANY

MATURITY DATE: DECEMBER 31, 1997

PRINCIPAL AMOUNT: ELEVEN MILLION FIVE HUNDRED THOUSAND  
DOLLARS

ISSUE DATE: DECEMBER 29, 1994

THE CITY OF LONG BEACH, a municipal corporation situated in the County of Los Angeles, State of California (the "City"), acting by and through its Board of Harbor Commissioners (hereinafter called the "Board"), FOR VALUE RECEIVED, hereby promises to pay, solely from Subordinated Revenues, as hereinafter provided, to the registered owner named above, or registered assigns, on the maturity date the principal amount set forth above; provided that if the maturity date falls on a day other than a day on which the City is open for regular business and banks in the State of California are not authorized to be closed (a "Business Day"), payment shall be made on the next succeeding Business Day. This Note shall be non-interest bearing, provided however that any principal not paid on such maturity date or the next Business Day, as the case may be, shall bear interest from such date until the date the same is paid at twelve percent (12%) per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months). The principal of this Note and any interest hereon are payable in lawful money of the United States of America. The principal of this Note shall be payable to the registered owner hereof upon presentation and surrender of this Note at the office of the Treasurer of the City (the "Treasurer"). Interest, if any, on this Note is payable upon demand to the registered owner hereof.

This Note is one of a duly authorized issue of City of Long Beach, California, Harbor Department Subordinated Revenue Notes, Series 1994 -- Southern Pacific

Transportation Company issued in the aggregate principal amount of \$33,000,000 pursuant to Article XII of the City Charter, Title 3, Chapter 3.52, Division I of the Municipal Code of the City (as amended), certain provisions of the Revenue Bond Law of 1941, Section 54300, et seq., of the Government Code of the State of California (said Article of the Charter, said provisions of the Municipal Code of the City and said provisions of the Government Code are referred to herein as the "Law") and Resolution No. HD-1739 of the Board of Harbor Commissioners of the City adopted by the Board on December 12, 1994 (the "Resolution"). The Notes are being issued in connection with the acquisition of certain property and various construction, maintenance and other services from Southern Pacific Transportation Company (the "Project"). Reference is hereby made to the Resolution, and to the Law for a description of the terms on which this Note is issued, the provisions with regard to the nature and extent of the Subordinated Revenues, and all of the terms of the Resolution and the Law are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Note, and by acceptance hereof the registered owner of this Note assents to said terms and conditions. The Resolution is adopted under, and this Note is issued under, and the Resolution and the Note are to be construed in accordance with, the laws of the State of California.

The Note is a special limited obligation of the City payable from and secured by a pledge of a lien and charge upon the Subordinated Revenues and is subordinate to all Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (all as defined in the Resolution) now existing or hereafter incurred or issued. The principal of and interest on the Note is not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Subordinated Revenues. The general fund of the City is not liable for the payment of the Note or its interest, nor is the credit or the taxing power of the City or the forfeiture of any of its property for the payment of this Note or any interest hereon.

As used herein, "Revenues" means all revenues, and all money secured or collected from or arising out of the use or operation of the Port of Long Beach or arising from the Port of Long Beach, including, without limitation, all tolls, charges, rentals, compensations or fees required to be paid for services, franchises or licenses, as permitted or required by the City Charter or otherwise by law, ordinance or order, to the City for the operation of

any public service utility upon lands and waters under the control and management of the Board and all investment earnings credited to the Harbor Revenue Fund (created by the Law) and not required to be deposited to a sub-fund, excepting therefrom any revenues arising from any lease, contract or other agreement providing for the drilling for, developing, producing, extracting, taking or removing, storing and disposing of oil, gas or other hydrocarbon substances from the tide and submerged lands granted to the City by the State. As used herein, "Port of Long Beach" means the entire harbor system subject to and under the jurisdiction of the Board as defined in the City Charter, and including, without limitation, all harbor or port improvements, work, utilities, appliances, facilities and water craft, owned, controlled or operated by the City in or upon or pertaining to the waterfront or navigable waters of the City as such system now exists together with all additions acquired, constructed or financed with funds derived from the sale of indebtedness authorized by the Board, together with all improvements and extensions to said system later constructed or acquired. As used herein, "Subordinated Revenues" means those Revenues remaining after payment or provision therefor of obligations now existing or hereafter issued or incurred secured by Revenues and payable from the Harbor Revenue Fund, including, without limitation, Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (as defined in the Resolution) (all as now existing or hereafter incurred or issued).

This Note shall be subject to call and redemption prior to maturity at the option of the Board, on any date between December 31, 1994 and February 28, 1995, inclusive, and at no time thereafter, in whole or in part, at a redemption price equal to the present value of this Note on the redemption date calculated using a discount rate of six percent (6%) per annum. The Treasurer shall provide notice of redemption of this Note and such notice shall be mailed not less than fifteen (15) nor more than thirty (30) days prior to the redemption date to the owner hereof. The notice of redemption shall state the date of such notice, the date of issue of this Note, the redemption date, the redemption price, the place of redemption (which shall be the office of the Treasurer in Long Beach, California), the maturity, and, if this Note shall be redeemed in part only, the respective portion of the principal amount hereof to be redeemed. This Note or portion hereof so called for redemption shall become due and payable on the redemption date specified in the notice at the redemption price hereof. Failure of the owner hereof to receive notice of

redemption or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

If payment is not made when due under that certain Note of Southern Pacific Transportation Company, dated December 22, 1994 in the aggregate principal amount of \$7,500,000 (the "SPT Note"), the City may set off and deduct from payment of the Notes maturing December 31, 1998 an amount equal to the sum not paid under the SPT Note, any such set-off and deduction to be allocated pro-rata among such Notes based on the principal amount thereof.

This Note may be transferred without charge upon the register required to be kept by the Treasurer, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of this Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Treasurer. Whenever this Note is surrendered for transfer, the City shall execute, authenticate and deliver a new Note of the same tenor and maturity and for a like aggregate principal amount. This Note may be exchanged at the office of the Treasurer for a like aggregate principal amount of other subordinated revenue notes of the same tenor and maturity in authorized denominations of \$5,000,000 and increments of \$50,000 in excess thereof. The Treasurer may require the owner of this Note requesting transfer of registration or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer of registration or exchange.

This Note shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been executed and dated by the Treasurer.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of California and that this Note, together with all other indebtedness of the City does not exceed any limit prescribed by the Constitution and laws of the State of California and the City Charter and is not in excess of the amount of the Note permitted to be issued under the Resolution.



IN WITNESS WHEREOF, the Board has caused this Note to be signed by the President of the Board of Harbor Commissioners, and the Executive Secretary of the Board of Harbor Commissioners by their facsimile or manual signatures, and sealed with the facsimile or manual corporate seal of said City as of the date specified above.

Carmen C. T...  
President of the Board of  
Harbor Commissioners of the  
City of Long Beach, California

COUNTERSIGNED

[Signature]  
Executive Secretary of the  
Board of Harbor Commissioners  
of the City of Long Beach,  
California

TREASURER'S CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Note is delivered pursuant to the within  
mentioned Resolution.

[Signature]  
Treasurer

\_\_\_\_\_  
ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby  
sell, assign and transfer unto

\_\_\_\_\_  
the within-mentioned registered Note and hereby irrevocably  
constitute(s) and appoint(s) \_\_\_\_\_  
attorney, to transfer the same on the books of the  
Treasurer with full power of substitution in the premises.

Dated: \_\_\_\_\_  
\_\_\_\_\_

Note: The signature(s) to this Assignment must correspond  
with the name(s) as written on the face of the within Note  
in every particular, without alteration or enlargement or  
any change whatsoever.

PROMISSORY NOTE

UNITED STATES OF AMERICA

No. 4

CITY OF LONG BEACH, CALIFORNIA  
HARBOR DEPARTMENT SUBORDINATED REVENUE NOTE, SERIES 1994 --  
SOUTHERN PACIFIC TRANSPORTATION COMPANY

REGISTERED OWNER: SOUTHERN PACIFIC TRANSPORTATION COMPANY

MATURITY DATE: DECEMBER 31, 1998

PRINCIPAL AMOUNT: ELEVEN MILLION FIVE HUNDRED THOUSAND  
DOLLARS

ISSUE DATE: DECEMBER 29, 1994

THE CITY OF LONG BEACH, a municipal corporation situated in the County of Los Angeles, State of California (the "City"), acting by and through its Board of Harbor Commissioners (hereinafter called the "Board"), FOR VALUE RECEIVED, hereby promises to pay, solely from Subordinated Revenues, as hereinafter provided, to the registered owner named above, or registered assigns, on the maturity date the principal amount set forth above; provided that if the maturity date falls on a day other than a day on which the City is open for regular business and banks in the State of California are not authorized to be closed (a "Business Day"), payment shall be made on the next succeeding Business Day. This Note shall be non-interest bearing, provided however that any principal not paid on such maturity date or the next Business Day, as the case may be, shall bear interest from such date until the date the same is paid at twelve percent (12%) per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months). The principal of this Note and any interest hereon are payable in lawful money of the United States of America. The principal of this Note shall be payable to the registered owner hereof upon presentation and surrender of this Note at the office of the Treasurer of the City (the "Treasurer"). Interest, if any, on this Note is payable upon demand to the registered owner hereof.

This Note is one of a duly authorized issue of City of Long Beach, California, Harbor Department Subordinated Revenue Notes, Series 1994 -- Southern Pacific

Transportation Company issued in the aggregate principal amount of \$33,000,000 pursuant to Article XIX of the City Charter, Title 3, Chapter 3.52, Division I of the Municipal Code of the City (as amended), certain provisions of the Revenue Bond Law of 1941, Section 54300, et seq., of the Government Code of the State of California (said Article of the Charter, said provisions of the Municipal Code of the City and said provisions of the Government Code are referred to herein as the "Law") and Resolution No. HD-1739 of the Board of Harbor Commissioners of the City adopted by the Board on December 12, 1994 (the "Resolution"). The Notes are being issued in connection with the acquisition of certain property and various construction, maintenance and other services from Southern Pacific Transportation Company (the "Project"). Reference is hereby made to the Resolution, and to the Law for a description of the terms on which this Note is issued, the provisions with regard to the nature and extent of the Subordinated Revenues, and all of the terms of the Resolution and the Law are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Note, and by acceptance hereof the registered owner of this Note assents to said terms and conditions. The Resolution is adopted under, and this Note is issued under, and the Resolution and the Note are to be construed in accordance with, the laws of the State of California.

The Note is a special limited obligation of the City payable from and secured by a pledge of a lien and charge upon the Subordinated Revenues and is subordinate to all Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (all as defined in the Resolution) now existing or hereafter incurred or issued. The principal of and interest on the Note is not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Subordinated Revenues. The general fund of the City is not liable for the payment of the Note or its interest, nor is the credit or the taxing power of the City or the forfeiture of any of its property for the payment of this Note or any interest hereon.

As used herein, "Revenues" means all revenues, and all money secured or collected from or arising out of the use or operation of the Port of Long Beach or arising from the Port of Long Beach, including, without limitation, all tolls, charges, rentals, compensations or fees required to be paid for services, franchises or licenses, as permitted or required by the City Charter or otherwise by law, ordinance or order, to the City for the operation of

any public service utility upon lands and waters under the control and management of the Board and all investment earnings credited to the Harbor Revenue Fund (created by the Law) and not required to be deposited to a sub-fund, excepting therefrom any revenues arising from any lease, contract or other agreement providing for the drilling for, developing, producing, extracting, taking or removing, storing and disposing of oil, gas or other hydrocarbon substances from the tide and submerged lands granted to the City by the State. As used herein, "Port of Long Beach" means the entire harbor system subject to and under the jurisdiction of the Board as defined in the City Charter, and including, without limitation, all harbor or port improvements, work, utilities, appliances, facilities and water craft, owned, controlled or operated by the City in or upon or pertaining to the waterfront or navigable waters of the City as such system now exists together with all additions acquired, constructed or financed with funds derived from the sale of indebtedness authorized by the Board, together with all improvements and extensions to said system later constructed or acquired. As used herein, "Subordinated Revenues" means those Revenues remaining after payment or provision therefor of obligations now existing or hereafter issued or incurred secured by Revenues and payable from the Harbor Revenue Fund, including, without limitation, Bonds, Parity Debt, Maintenance Costs and Credit Facility Agreements (as defined in the Resolution) (all as now existing or hereafter incurred or issued).

This Note shall be subject to call and redemption prior to maturity at the option of the Board, on any date between December 31, 1994 and February 28, 1995, inclusive, and at no time thereafter, in whole or in part, at a redemption price equal to the present value of this Note on the redemption date calculated using a discount rate of six percent (6%) per annum. The Treasurer shall provide notice of redemption of this Note and such notice shall be mailed not less than fifteen (15) nor more than thirty (30) days prior to the redemption date to the owner hereof. The notice of redemption shall state the date of such notice, the date of issue of this Note, the redemption date, the redemption price, the place of redemption (which shall be the office of the Treasurer in Long Beach, California), the maturity, and, if this Note shall be redeemed in part only, the respective portion of the principal amount hereof to be redeemed. This Note or portion hereof so called for redemption shall become due and payable on the redemption date specified in the notice at the redemption price hereof. Failure of the owner hereof to receive notice of

redemption or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

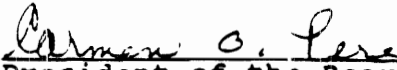
If payment is not made when due under that certain Note of Southern Pacific Transportation Company, dated December 22, 1994 in the aggregate principal amount of \$7,500,000 (the "SPT Note"), the City may set off and deduct from payment of the Notes maturing December 31, 1998 an amount equal to the sum not paid under the SPT Note, any such set-off and deduction to be allocated pro-rata among such Notes based on the principal amount thereof.

This Note may be transferred without charge upon the register required to be kept by the Treasurer, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of this Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Treasurer. Whenever this Note is surrendered for transfer, the City shall execute, authenticate and deliver a new Note of the same tenor and maturity and for a like aggregate principal amount. This Note may be exchanged at the office of the Treasurer for a like aggregate principal amount of other subordinated revenue notes of the same tenor and maturity in authorized denominations of \$5,000,000 and increments of \$50,000 in excess thereof. The Treasurer may require the owner of this Note requesting transfer of registration or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer of registration or exchange.


This Note shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been executed and dated by the Treasurer.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of California and that this Note, together with all other indebtedness of the City does not exceed any limit prescribed by the Constitution and laws of the State of California and the City Charter and is not in excess of the amount of the Note permitted to be issued under the Resolution.

IN WITNESS WHEREOF, the Board has caused this Note to be signed by the President of the Board of Harbor Commissioners, and the Executive Secretary of the Board of Harbor Commissioners by their facsimile or manual signatures, and sealed with the facsimile or manual corporate seal of said City as of the date specified above.

  
\_\_\_\_\_  
President of the Board of  
Harbor Commissioners of the  
City of Long Beach, California

COUNTERSIGNED

  
\_\_\_\_\_  
Executive Secretary of the  
Board of Harbor Commissioners  
of the City of Long Beach,  
California

**TREASURER'S CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Note is delivered pursuant to the within  
mentioned Resolution.

  
\_\_\_\_\_  
Treasurer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby  
sell, assign and transfer unto

\_\_\_\_\_  
the within-mentioned registered Note and hereby irrevocably  
constitute(s) and appoint(s) \_\_\_\_\_  
attorney, to transfer the same on the books of the  
Treasurer with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Note: The signature(s) to this Assignment must correspond  
with the name(s) as written on the face of the within Note  
in every particular, without alteration or enlargement or  
any change whatsoever.



**EXHIBIT G**  
**FORM OF USE OF TRACKS AGREEMENT**

**[Attached Hereto]**

## Use of Tracks Agreement

Southern Pacific Transportation Company ("SPT"), The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), The City of Los Angeles, acting by and through The Board of Harbor Commissioners of the Port of Los Angeles ("POLA") and The City of Long Beach, acting by and through its Board of Harbor Commissioners ("POLB"), hereby agree to the following provisions:

1. SPT's Right to Use Certain Santa Fe Tracks.

(a) Following completion by POLA and POLB (collectively "Ports") of the Watson Yard Connection Track connecting Santa Fe's Lomita Boulevard Spur Track to the proposed Alameda Corridor main line tracks and SPT's drill track, upon the Ports then severing SPT's track connection to its wye track south of Thenard Junction that is now used by SPT for its locomotive turnaround movements (the parties acknowledge that Ports shall have no obligations hereunder if such track connection is not severed), and subject to completion of construction of a power turnout between the Lomita Boulevard Spur Track and the Harbor Subdivision as described in Paragraph 2 of this Agreement, SPT shall have the right to use certain tracks owned by Santa Fe and known as (1) the Lomita Boulevard Spur, (2) the Watson Yard Connection Track between Santa Fe's Lomita Boulevard Spur and the Alameda Corridor, (3) Santa Fe's Harbor Subdivision rail line, between the connection of that rail line to the Lomita Boulevard Spur Track, at approximately Milepost 26.9, and Harbor Subdivision Milepost 27.6, in the vicinity of Thenard Crossing, and (4) 1000 feet of the Harbor Subdivision north of its connection with the Lomita Boulevard Spur. These four tracks shall be referenced collectively hereinafter as "Tracks."

(b) SPT may use the Tracks for turnaround movements, no more frequently than five times each day, of locomotives only, or locomotives and freight cars, up to a maximum length of 1000 feet, except track segment (4) in Paragraph 1(a) may be used only as a tail track in connection with such turnaround movements. Prior to using the Tracks, SPT shall provide to Santa Fe and the Corridor Dispatcher (as that term is defined in the Memorandum of Understanding for Joint Operating Agreement (Alameda Transportation Corridor) ("MOU") between SPT, Santa Fe, Ports and Union Pacific Railroad Company), at least two hours' advance notice of each use. Santa Fe train operations on the Tracks shall have priority over SPT's locomotive operations on the Tracks.

(c) If SPT's track connection to its wye track south of Thenard Junction is reconnected and such wye track is still in place in a physical condition comparable to that existing on December 28, 1994, then at the request of POLA and POLB, SPT shall use such wye track instead of the Tracks.

2. Construction of a Power Turnout.

As a condition which must be satisfied before SPT has any rights to use the Tracks, Santa Fe must complete construction, and Ports must pay (as a cost of the Project as defined in the MOU) the reasonable costs of construction of a reasonable signal-powered switch and turnout between the Lomita Boulevard Spur Track and the Harbor Subdivision, at approximately Milepost 26.9, which turnout shall be connected to the dispatching system controlled by the Corridor Dispatcher and which shall be controlled by the Corridor Dispatcher.

3. Charges Payable for Use of the Tracks.

SPT shall pay to Santa Fe \$10,000 per year, payable on the first day of each year, to compensate Santa Fe for its use of the Tracks, maintenance costs incurred by Santa Fe as a result of SPT's use of the Tracks, and operating costs and inconvenience incurred by Santa Fe as a result of SPT's use of the Tracks. Amounts payable by SPT shall be due 30 days from the date billed by Santa Fe.

4. Condition of Tracks and Tracks Maintenance.

Santa Fe shall maintain the power switch and turnout at levels that will permit SPT and Santa Fe to have efficient access to and from the Rail Corridor and SPT's and Santa Fe's local rail service tracks and facilities between the Rail Corridor and the power switch and turnout. SPT acknowledges that the Tracks today have certain physical characteristics which may limit locomotive operations over the Tracks, and accepts its right to use the Tracks in "as is, where is" condition. Santa Fe shall maintain the Tracks in the same general condition as the Tracks are in today, subject to (1) Santa Fe's right, in its sole discretion, to upgrade all or any portion of the Tracks, and (2) Santa Fe's right to discontinue its rail service over, and to abandon and remove, the Tracks, subject to all prior approvals or exemptions required from the Interstate Commerce Commission or the California Public Utilities Commission.

5. Allocation of Liability.

If any locomotive or equipment being moved by SPT under its rights set forth in this Agreement is involved in, causes, or in any way contribute to, any loss, damage, personal injury or death, SPT shall be responsible for such loss, damage, personal injury or death, except to the extent of the gross negligence or wilful misconduct of Santa Fe. Santa Fe shall be responsible for any loss, damage, personal injury or death in which any locomotives or equipment being moved by SPT under its rights set forth in this Agreement is involved, causes, or in any way contributes to, such loss, damage, personal injury or death, solely to the extent of Santa Fe's gross negligence or wilful misconduct. POLA and POLB shall be responsible only for the negligence or wilful misconduct of the Corridor Dispatcher, to the extent and on the terms set forth in the

MOU. Any party shall indemnify any other party to the extent the indemnifying party is responsible under the terms of this Paragraph 5.

6. Term of Agreement.

The term of this Agreement shall commence from the effective date of this Agreement, and shall continue for as long as SPT has the right to use the Alameda Corridor.

7. Integration.

This Agreement is the complete agreement of the parties with respect to the matters addressed herein, and supersedes and controls over any and all other agreements between the parties related to the matters addressed herein.

8. Interpretation.

To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

9. Waiver.

The waiver by any party of the breach of any provision herein by any other party shall in no way impair the right of that party to enforce that provision for any subsequent breach thereof.

10. Assignment.

All terms of this Agreement shall be binding upon the legal representatives, successors and assignees of any party to this Agreement. However, SPT may not assign its rights under this Agreement without the prior written consent of Santa Fe, which Santa Fe shall not withhold without sufficient reason.

11. Choice of Law.

All questions concerning the meaning or application of the terms of this Agreement shall be decided according to the laws of the State of California.

IN WITNESS WHEREOF, authorized representatives of the parties hereby execute this Agreement as of the 22nd day of December, 1994.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

By: [Signature]  
Title: Chairman

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY

By: [Signature]  
Title: Senior Vice President - Chief of Staff

CITY OF LOS ANGELES, acting by  
and through the Board of Harbor  
Commissioners of the Port of Los  
Angeles

Date 28 Dec, 1994

Attest: [Signature]  
Commission Secretary  
Los Angeles Harbor Department

By: [Signature]  
Executive Director  
Los Angeles Harbor Department

Approved as to form this 28th day of December, 1994.

JAMES K. KAHN, City Attorney

By: [Signature]  
Assistant/Deputy

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

By: [Signature]  
Executive Director  
Long Beach Harbor Department

Approved as to form this 28 day of December, 1994.

JOHN R. CALHOUN, City Attorney

By: [Signature]  
Deputy

**EXHIBIT D**  
**RIGHT OF ENTRY AND CONSTRUCTION AGREEMENT**

BNSF Secy. Cont. No: \_\_\_\_\_  
BNSF File No. 01000079 (Alameda Corridor)

This **RIGHT OF ENTRY AND CONSTRUCTION AGREEMENT** ("Agreement"), made this \_\_\_\_\_ day of October 1998, is by and among **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), the **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority organized under the laws of the State of California ("**ACTA**"), the **CITY OF LOS ANGELES**, a municipal corporation, acting through its Board of Harbor Commissioners ("**POLA**"), and the **CITY OF LONG BEACH**, a municipal corporation, acting through its Board of Harbor Commissioners ("**POLB**") (POLA and POLB are referenced sometimes herein collectively as "**Ports**").

**R E C I T A L S:**

A. BNSF owns and operates a line of railroad in and through the City of Los Angeles commonly referred to as its San Bernardino Subdivision.

B. Pursuant to that certain Agreement for Sale of Certain Real Property Interests in the Los Angeles Harbor Subdivision Rail Line between MP 27.6 and MP 28.3 and Other Interests at Redondo Junction of The Atchison, Topeka and Santa Fe Railway Company to City of Los Angeles and City of Long Beach dated as of December 22, 1994 ("**BNSF Purchase Agreement**"), by and between Ports and BNSF's predecessor-in-interest, Ports acquired a portion of BNSF's Harbor Subdivision, and BNSF and Ports agreed to certain standards of construction of a rail-to-rail grade separation at or in the vicinity of Redondo Junction on terms set forth therein.

C. In addition to the property acquired by Ports pursuant to the BNSF Purchase Agreement, Ports have acquired certain railroad rights of way from **Union Pacific Railroad Corporation**, a Delaware corporation ("**UP**"), and its predecessor-in-interest.

D. Pursuant to that certain Memorandum of Understanding for Joint Operating Agreement (Alameda Transportation Corridor) dated as of December 22, 1994 ("**MOU**"), by and among Ports, BNSF's predecessor-in-interest, UP and UP's predecessor-in-interest, the parties agreed to certain terms regarding construction of the Alameda Corridor Project on property acquired by Ports from BNSF's predecessor-in-interest, UP and UP's predecessor-in-interest, which project, among other things, will establish a unified freight system providing access to and from the Ports of Los Angeles and Long Beach. As used in this Agreement, the term "**Project**" means the rail and infrastructure project commonly known as the Alameda Corridor Project as shown on the Conceptual Design Layout Alternative 2.1B date stamped December 22, 1994 and initialled by Ports, BNSF's predecessor-in-interest, UP and UP's predecessor-in-interest, as updated and, to the extent shown thereon, superseded by those certain Track Schematic Drawings dated 12 January 1998 (with a date code of 1 October 1998 along the lower right margin) and initialled by Ports, ACTA, BNSF and UP, a copy of which Track Schematic Drawings are attached hereto as Exhibit "A-2" and made a part hereof (as

updated and modified, the "**Conceptual Design Layout**"). BNSF, Ports and ACTA acknowledge that the Conceptual Design Layout is in the process of being modified and updated. The modifications and updates to the Conceptual Design Layout shall be subject to the review and approval of BNSF, which approval shall not be unreasonably withheld or delayed. The Conceptual Design Layout may be modified only by the mutual consent of the parties to this Agreement. Upon completion of such modifications and updates, BNSF, UP, ACTA and Ports shall initial a complete, integrated set of the drawings comprising the Conceptual Design Layout, and such initialled set of drawings thereafter shall be the Conceptual Design Layout for all purposes under this Agreement and the Corridor Operating Agreement (defined below). To the extent there is any conflict between the depiction of the Project shown on the Conceptual Design Layout and the description of the Project set forth in this Agreement, the Conceptual Design Layout shall control. The consolidated main line rail portion of the Project is referred to in this Agreement as the "**Corridor**."

E. As part of the Project, ACTA will construct a new railroad bridge over a different route over the Los Angeles River, a rail-to-rail grade separation (or "flyover") in the vicinity of Redondo Junction, and certain rail improvements related to the new railroad bridge and rail-to-rail grade separation (collectively, "**Redondo Grade Separation Improvements**"), a portion of which will be constructed within BNSF's San Bernardino Subdivision rail corridor. After completion, and pursuant to a separate agreement among ACTA, Ports, Los Angeles County Metropolitan Transportation Authority ("**LACMTA**"), Orange County Transportation Authority ("**OCTA**") and Riverside County Transportation Commission ("**RCTC**"), certain of the Redondo Grade Separation Improvements will be owned by LACMTA and will be used by LACMTA, OCTA, RCTC, the National Railroad Passenger Corporation ("**Amtrak**") and BNSF.

F. As a further part of the Project: (i) the existing San Bernardino Subdivision Bridge which crosses Washington Boulevard (P.U.C. No. 2-143.2-B, D.O.T. No. 027629D) will be removed, relocated and replaced by a new 204-foot long double track steel through truss structure on concrete ("**Washington Boulevard Grade Separation**"); and (ii) the Harbor Subdivision Bridge which crosses Washington Boulevard (P.U.C. No. 2H-0.1B, D.O.T. No. 027900U) will be removed. The new Washington Boulevard Grade Separation will continue to be designated as P.U.C. Crossing No. 2.143.2-B, D.O.T. No. 027629D).

G. As a further part of the Project, the existing Soto Street Grade Separation (P.U.C. No. 2-143.6-B, D.O.T. No. 027630X) will be removed and replaced by a new 119-foot long double track rail bridge structure ("**Soto Street Grade Separation**").

H. As a further part of the Project, the existing Downey Road Grade Separation (P.U.C. No. 2-144.5-B, DOT No. 027631E) ("**Downey Road Grade Separation**") will be widened.

I. Concurrently herewith, ACTA, Ports, BNSF and UP are entering into that certain Alameda Corridor Use and Operating Agreement of even date herewith ("**Corridor Operating Agreement**"), which Corridor Operating Agreement supersedes the MOU.

**NOW, THEREFORE, BNSF, ACTA and Ports hereby agree as follows:**

ARTICLE I.  
**BNSF CONSTRUCTION MATTERS**

1.1 As used in this Agreement, the term "**BNSF Property**" means, collectively, (i) a portion of BNSF's San Bernardino Subdivision rail corridor, (ii) a portion of BNSF's (and LACMTA's) Harbor Subdivision rail corridor, (iii) a portion of BNSF's Autodock Lead track rail corridor and 9th Street Yard, and (iv) BNSF Property operated by the Los Angeles Junction Railway Company, on which ACTA and BNSF will construct a portion of the Project, as shown on Exhibits "A" and "A-1" attached hereto and made a part hereof. BNSF hereby grants to ACTA, its successors and assigns, at no cost to ACTA or Ports and upon and subject to the terms and conditions hereinafter set forth, permission and license to enter upon and use a portion of the BNSF Property as is necessary for ACTA to construct portions of the Project thereon (as shown on Exhibits "A" and "A-1"), excepting and reserving the right to be exercised by BNSF, and by any others who have obtained, or may obtain, permission or authority from BNSF so to do:

(a) To operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of the BNSF Property; and

(b) From time to time to construct, operate, maintain, renew and/or relocate upon the BNSF Property additional facilities of the character described in Section 1.1(a), all to the extent (and subject to the condition) that such railroad track or tracks, wires, pipelines and other facilities do not interfere with the construction, use and operation of the Project.

The right of entry set forth in this Section 1.1 is given by BNSF without warranty of title of any kind, express or implied, and no covenant of warranty of title shall be implied from the use of any word or words herein contained. In case such right of entry is revoked and ACTA is evicted from the BNSF Property by anyone (other than BNSF) owning, or claiming title to or any interest in, said right of way, BNSF shall not be liable to ACTA for any damage of any nature whatsoever.

1.2 BNSF shall furnish all labor, materials, tools and equipment, and do all railroad work required, with respect to construction on the BNSF Property of certain portions of the Project, as shown on Exhibits "A" and "A-1" ("**Railroad Work**"), such Railroad Work and the estimated cost thereof being as described in Exhibit "B" attached hereto and made a part hereof. Any item of work incidental to those items listed in said Exhibit "B", but not specifically mentioned therein, may be included as part of this Agreement as an item of work upon written approval of ACTA, if practicable (which approval shall not be unreasonably withheld, conditioned or delayed). Principal elements of the Railroad Work shall include the following:

(a) Preliminary engineering, design, and contract preparation related to the Project;

(b) Furnishing of such watchmen and flagmen as may be necessary for the safety of the BNSF Property and the operation of BNSF's trains and passenger



trains during BNSF's construction of portions of the Project on the BNSF Property;

(c) Providing bridge inspection as BNSF reasonably deems necessary in connection with construction of the Washington Boulevard Grade Separation and the Soto Street Grade Separation and widening of the Downey Road Grade Separation;

(d) Realign over, realign back, and construct portions of new North and South Main Tracks on the Soto Street Grade Separation to be constructed by ACTA as part of the Project, as shown on Exhibit "A";

(e) Provide temporary lineover and connection into the Washington Boulevard Auto Dock Lead Track Shoofly, and lineover and connect to the relocated Washington Boulevard Auto Dock Lead Track at its permanent location, as shown on Exhibit "A";

(f) Placement of bumpers to enable ACTA to remove permanently a portion of BNSF's Ninth Street Yard;

(g) Construction of approximately 7500 feet of replacement storage tracks ("**L.A. River Yard**") on property owned by BNSF (or over which BNSF has the necessary rights) and located near the Los Angeles Junction Railway Company (as shown on Exhibit "A"), replacing tracks on the BNSF Property that will be removed, reused for other purposes or rendered ineffective for their intended purpose as a result of construction of portions of the Project on the BNSF Property;

(h) The lining over and lining back of the Harbor Subdivision main track connections at Slauson Avenue to accommodate ACTA's construction of a temporary shoofly required for the construction of the Harbor Subdivision Grade Separation over the Corridor, as shown on Exhibit "A";

(i) The design and installation of a wayside signal system to accommodate the Project, including the relocation of the Hobart Tower signal control to BNSF's Network Operating Center;

(j) Construction of a southwest leg, Track No. 6, and realignment of the southeast leg of the Wye Track, Track No. 130, as shown on Exhibit "A", in order to provide connections to the San Pedro Branch acquired by Ports from UP ("**San Pedro Branch**");

(k) Realignment of the UP Transfer Track, Track No. 327, as shown on Exhibit "A", and relocation of flood light poles;

(l) Removal and replacement of a portion of the Auto Dock Lead Track, as shown on Exhibit "A", required for the installation of the Los Angeles County's 11 feet by 10 feet concrete box culvert;

(m) Reconstruction of the San Bernardino Subdivision's connection to the Harbor Subdivision at BNSF MP 143.41, as shown on Exhibit "A";

(n) Extension of the United Parcel Company private at-grade crossing at Hobart Yard, as shown on Exhibit "A";

(o) Construction of a new private at-grade crossing across BNSF's Auto Dock Lead, Track No. 255, as shown on Exhibit "A", in order to provide access to the Metropolitan Water District, Los Angeles County, Los Angeles Department of Water and Power, LACMTA, Amtrak and ACTA facilities for purpose of maintenance;

(p) Reconstruction of the at-grade crossings on 26th Street as required for the realignment of Spur Track No. 70 and of the southeast leg of the Wye Track, Track No. 130, construction of a new at-grade crossing necessitated by the reconstruction of the southwest leg of the Wye Track, Track No. 6, at a curvature acceptable to BNSF, and installation of appropriate grade crossing warning devices, all as shown on Exhibit "A";

(q) Construction of a third and fourth main track from the flyover portion of the Redondo Grade Separation Improvements to approximately BNSF Milepost 145.0, including all necessary crossover tracks, as shown on Exhibit "A";

(r) Rearrange and reconstruct BNSF's existing main tracks, and switching lead Track No. 80, all as shown on Exhibit "A";

(s) Extend switching tail track west of Hobart Yard for purpose of permitting unobstructed through train movements on and off of the Corridor, as shown on Exhibit "A";

(t) Furnish "as-built" plans to ACTA pursuant to Section 1.11; and

(u) Review and approve the Project's railroad signal plans.

In addition to (among other things) depicting the Railroad Work, Exhibits "A" and "A-1" show certain work on the BNSF Property that will be undertaken by BNSF, at its sole cost, in connection with the Project.

**1.3** BNSF shall do all work provided in Section 1.2 above with its own employees working under Railroad Labor Agreements or by contractor(s), if necessary, and on an actual cost basis, including overhead (as shown on Exhibit "B"). The Railroad Work shall be performed in a good and workmanlike manner, and in accordance with any plans and/or specifications therefor that may be prepared by or on behalf of BNSF and approved by BNSF ("**BNSF Plans**"). The parties recognize that much (and perhaps all) of the Railroad Work will be performed without any detailed BNSF Plans being prepared. With respect to any portion of the Railroad Work that will connect to the Corridor, the Redondo Grade Separation Improvements or any other portion of the ACTA Work (as defined below):

(a) BNSF shall consult with ACTA and its engineers and consultants in connection with any BNSF Plans that are prepared for portions of the Railroad Work, and ACTA shall make its engineers and consultants reasonably available to BNSF for such purposes.

(b) BNSF shall deliver to ACTA each set of BNSF Plans that are prepared for portions of the Railroad Work. ACTA shall provide to BNSF any comments, suggestions or disapprovals regarding each such set of BNSF Plans that may be prepared, which comments, suggestions or disapprovals shall be delivered to BNSF in time reasonably sufficient to enable BNSF to review ACTA's comments, suggestions or disapprovals and still perform the Railroad Work in a timely manner. BNSF shall evaluate and consider ACTA's timely comments and suggestions in good faith, provided that BNSF shall have no obligation to incorporate such comments or suggestions into any BNSF Plans or make any revisions or modifications to the Railroad Work in response thereto, except as provided in Section 1.3(c) below.

(c) Any ACTA disapproval of any BNSF Plans shall set forth in reasonable detail the reasons therefor. The BNSF Plans may be disapproved by ACTA only if, in ACTA's reasonable and good faith judgment: (i) the design of such Railroad Work is unsafe or fails to comply with any applicable law or regulation, or (ii) the design of such Railroad Work is materially inconsistent with the diagrams attached hereto as Exhibit "A" or Exhibit "A-1". If any proposed BNSF Plans are disapproved, the parties shall promptly meet and negotiate in good faith to attempt to mutually agree upon acceptable BNSF Plans. If they are unsuccessful in resolving such dispute within 10 days thereafter, either party may submit such matter to arbitration in a manner consistent with Section 33 of the BNSF Purchase Agreement. Any material modification to any approved BNSF Plans shall be subject to ACTA's approval in the manner described above.

(d) After such BNSF Plans have been approved by ACTA, such BNSF Plans are and shall be deemed adopted and incorporated into this Agreement by reference.

**1.4** BNSF is hereby authorized to include a charge equal to the amount actually paid by BNSF for force account insurance in connection with the Project (which amount is shown on Exhibit "B").

**1.5** It is understood and agreed that the cost estimates set forth in Exhibit "B" cover what is currently believed to be the nature and extent of the Railroad Work required due to the construction of the Project. ACTA agrees to include as part of the cost of the Project BNSF's preliminary engineering, design and contract preparation expenses as described in Section 1.2(a) (other than fees and expenses of BNSF's outside counsel that are related to the project, which ACTA will review and approve if ACTA reasonably determines that BNSF's use of outside counsel was authorized by Ports or ACTA), which expenses are shown on Exhibit "B", notwithstanding the fact that some of this work may have preceded the date of this Agreement. In the event of any change in the Railroad Work or the Project as a result of a mutually agreed

modification thereto. BNSF shall have the right, acting reasonably and in good faith, to immediately revise the Force Account Estimate (up or down) to reflect such agreed-upon modification in the Railroad Work or the Project.

1.6 BNSF shall not be obligated to commence the Railroad Work until such time as ACTA has delivered a "notice to proceed." In the event that such notice to proceed has not been delivered within six (6) months from the date of this Agreement, BNSF, acting reasonably and in good faith, may revise (up or down) the cost estimates set forth in Exhibit "B" to reflect changes (up or down) in the current hourly rates for labor, the actual cost of materials and the transportation expense, increases in costs attributable to changes (on a system wide basis, for all projects) in BNSF's engineering design standards or work practices, and customary overhead costs, since the date of this Agreement and prior to completion of the Project. In addition, BNSF, acting reasonably and in good faith, annually may revise (up or down) such cost estimates during the First Quarter of each calendar year thereafter (prior to the completion of the Project) for those portions of the Railroad Work that have not been completed in order to reflect changes (up or down) in the current hourly rates for labor, the actual cost of materials and the transportation expense, increases in costs attributable to changes (on a system wide basis, for all projects) in BNSF's engineering design standards or work practices, and customary overhead costs. Furthermore, flagging costs as currently estimated in Exhibit "B" are based upon the present construction schedule contemplated by the parties, and could change (up or down) based on changes in such construction schedule. BNSF shall revise (up or down) its cost estimates to include any changes (up or down) in its flagging cost resulting from any changes in the construction schedule.

1.7 At such time as BNSF has performed Railroad Work equal to approximately 75% of the cost estimates set forth in Exhibit "B", as may be revised from time to time in accordance with Sections 1.5 and 1.6 above, BNSF will notify ACTA if it appears that the then-current cost estimate is insufficient to complete the Railroad Work. In such event, ACTA shall seek additional appropriation and authorization of funding sufficient to cover such remaining Railroad Work. Unless and until such additional funding is appropriated and authorized, BNSF may stop work.

1.8 BNSF shall have the right to increase the Exhibit "B" cost estimates to include the actual cost of installing on the BNSF Property as part of the Project any crossing warning devices ordered to be installed in connection with the Railroad Work by the Public Utilities Commission of the State of California (the "**Commission**"), but only to the extent that such crossing warning devices are required solely as a result of the Railroad Work and are installed prior to completion of the Project. BNSF also may increase the Exhibit "B" cost estimates as a result of any other government agency requirement that is imposed upon and which is directly related to the Project (within or adjacent to the ownership limits of the BNSF Property or the property owned or leased by ACTA or Ports) after the date of this Agreement and prior to completion of the Project. Notwithstanding the foregoing, BNSF shall not agree, without first obtaining the written consent of ACTA, to construct or pay for any improvements or modifications requested or required by LACMTA, OCTA and/or RCTC in connection with separate negotiations currently ongoing among BNSF, LACMTA, OCTA and RCTC relating to the Redondo Grade Separation Improvements and other matters related to the Project.

1.9 BNSF shall order all materials necessary for the completion of the Railroad Work, and cause the vendors of such materials to deliver the invoices therefor to ACTA for payment. Provided that BNSF has notified ACTA that BNSF has received and accepted such materials, ACTA shall pay directly to the vendors thereof the amount of such invoices in accordance with the terms thereof (and ACTA promptly shall deliver to BNSF copies of such invoices). All materials for the Railroad Work shall be acquired in BNSF's name and delivered to such location(s) designated by BNSF. After accepting delivery thereof, BNSF shall bear the risk of loss or damage to all such materials (but ACTA shall reimburse BNSF, promptly after receipt of an invoice therefor, for costs incurred by BNSF to protect such materials prior to the installation thereof).

1.10 BNSF shall submit to ACTA periodic progress billing statements on BNSF's standard form (which statements shall show in reasonable detail the work completed and a breakdown of the cost of labor and overhead for the work completed) covering the cost of the work performed by BNSF prior to such statement, in amounts of not less than One Thousand Dollars (\$1,000.00) per billing. ACTA agrees to pay BNSF for any such progress billing within thirty (30) days after receipt thereof. Interest shall be paid at the rate of ten percent (10%) per annum on any such progress billing which has not been paid by ACTA within said thirty (30) day period. BNSF shall not submit more than one such billing statement in any calendar month. ACTA shall not be obligated to pay BNSF for the amount shown on the final such statement until all of the Railroad Work has been completed. Notwithstanding anything to the contrary in this Agreement, all amounts paid to BNSF by or on behalf of ACTA as reimbursement for the Railroad Work shall be included in "Net Project Costs" (as defined in the Corridor Operating Agreement).

1.11 BNSF shall submit to ACTA, within six (6) months after completion of the Railroad Work, a detailed statement of final costs, segregated as to labor and overhead for each item in the recapitulation shown on Exhibit "B", together with BNSF's standard form accounting report showing (in reasonable detail) BNSF's use of the materials purchased by ACTA pursuant to Section 1.9 above. If and to the extent that BNSF does not use all of such materials in connection with the Railroad Work, BNSF either shall return such materials to the vendor for a refund (and BNSF promptly shall pay to ACTA the entire amount of any refund so received from the vendor) or, if such a refund is not acceptable to the vendor, BNSF promptly shall reimburse ACTA for the actual cost of such surplus materials. In addition, with respect to any portion of the Railroad Work that will connect to the Corridor, the Redondo Grade Separation Improvements or any other portion of the ACTA Work, BNSF will furnish ACTA, at ACTA's cost, one set of as built plans for such portion of the Railroad Work prepared in U.S. Customary Units, as well as one set of computer diskettes, containing as built CAD drawings of such portion of the Railroad Work and identifying the software used for such CAD drawings. The "as built plans" also shall include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities shall be shown. All rail corridor boundaries shall be distinguished by ownership and dimensions with appropriate distances and bearings and shall have dimensioned references from right of way corners, angle points, and curve points to the centerline of adjacent tracks.

1.12 Subject to the other provisions of this Agreement, BNSF shall cause the Railroad Work to be undertaken with due diligence, and shall use commercially reasonable

efforts to complete the Railroad Work in accordance with the construction schedule, so as to not impede ACTA's construction of the ACTA Work.

**1.13** BNSF hereby approves the preliminary schematic design drawings of the Redondo Grade Separation Improvements (including, without limitation the 3% grade thereof) and the other components of the Project shown on Exhibits "A" and "A-1". Without limiting the generality of the foregoing, BNSF agrees that (i) the design of the Redondo Grade Separation Improvements meets the requirements and satisfies the conditions set forth in Paragraph 3(b)(3) of the BNSF Purchase Agreement, and (ii) the design of BNSF's rail connection to the Corridor meets the requirements and satisfies the conditions set forth in Paragraph 3(b)(4) of the BNSF Purchase Agreement.

**1.14** The terms and provisions of this Agreement shall be applicable to any work orders delivered to BNSF by ACTA or Ports prior to the date of this Agreement with respect to the Project.

## **ARTICLE II.**

### **ACTA CONSTRUCTION MATTERS**

**2.1** ACTA shall select and engage qualified engineering firms, architects and consultants, and/or a design-build contractor, to prepare or furnish the Project schematic designs, preliminary and final engineering, structural and mechanical plans, preliminary and final construction plans and specifications, and/or design progress submittals (collectively, "**Plans and Specifications**"). The Project will be designed consistent and in conformance with the guidelines and standards set forth in the Manual for Railway Engineering promulgated by the American Railway Engineering and Maintenance-of-way Association ("**AREMA**") in effect at the time of such design (or, with respect to any ACTA Work to be constructed on the BNSF Property, in conformance with BNSF's engineering standards), or such other standards as may be agreed upon by BNSF and ACTA.

**(a)** BNSF and UP have agreed to engage Hanson Wilson Incorporated ("**HWI**") to review and provide comments on the Plans and Specifications (with the exception of Plans and Specifications for railroad signals) on behalf of both railroads. HWI will not review railroad signal Plans and Specifications. UP and BNSF will divide the task for review of the railroad signal Plans and Specifications among themselves, and ACTA shall reimburse BNSF for its actual cost for such review (as shown on Exhibit "B"). The costs of HWI shall be reimbursed to the railroads by ACTA. The parties acknowledge that HWI has provided an estimate for its costs and expenses to provide the services contemplated by this Agreement, which estimate in certain respects is not acceptable to ACTA. BNSF and ACTA shall negotiate with HWI, reasonably and in good faith, to attempt to agree upon an acceptable budget for HWI's costs and expenses within 30 days after the date of this Agreement. If the parties are unable to reach agreement on such budget within this 30-day period, ACTA or BNSF may submit the matter to arbitration in a manner consistent with Section 33 of the BNSF Purchase Agreement. During the pendency of the parties' negotiations and, if applicable, any arbitration proceedings, ACTA shall continue to reimburse

UP and BNSF for HWI's costs and expenses at HWI's standard rates in the manner contemplated by this Agreement (subject to adjustment based upon any changes to HWI's standard rates on which the parties may agree). If the parties and HWI are unable to agree upon an acceptable budget for HWI's costs and expenses, and BNSF and UP therefore elect to retain a different third party consultant to review Plans and Specifications, any time periods within which BNSF is to provide comments or approvals to Plans and Specifications shall be tolled until such time as a mutually agreeable third party consultant is engaged by BNSF and UP (and the costs and expenses of such other third party consultant shall be reimbursed by ACTA in the manner set forth in this Agreement). In addition to the foregoing, if from time to time during construction of the Project either BNSF or UP engage a third party consultant to expedite and coordinate the activities of HWI and the review and approval process, ACTA shall reimburse such railroad for the actual costs of such third party consultant promptly upon receipt of an invoice therefor. ACTA shall consult with HWI in connection with the preparation and revision of the Plans and Specifications for the rail portions of the Project (i.e., the Corridor and other portions of the Project which provide structural support for the Corridor or otherwise affect rail operations), and BNSF and UP shall cause HWI to be available on a reasonable basis for such purposes.

(b) ACTA promptly shall deliver to HWI (with a copy to BNSF, except that design progress submittals will not be delivered to BNSF), or shall cause the contractor(s) to deliver concurrently to ACTA and HWI (and BNSF), copies of each set of Plans and Specifications for the rail portions of the Project, with any changes to earlier supplied plans either to be marked on the new set of Plans and Specifications or detailed on a separate document. BNSF shall review the Plans and Specifications, and shall deliver to ACTA any comments, suggestions, approvals or disapprovals thereof in time reasonably sufficient to enable ACTA to review BNSF's comments, suggestions, approvals or disapprovals and then respond and provide comments to ACTA's engineers and contractors within the time periods specified in the construction documents (and ACTA shall notify BNSF of such time periods). If at any time BNSF fails to provide such comments, suggestions, approvals or disapprovals within the time specified above then, upon written notice faxed to BNSF, BNSF shall cause its authorized representative(s) to meet promptly (and, in any event, within 48 hours after BNSF's receipt of such faxed notice) with ACTA's representatives in Los Angeles, California to discuss the reasons for BNSF's failure to timely provide such comments, suggestions, approvals or disapprovals, and to reasonably agree upon a course of conduct to avoid future failures (which course of conduct BNSF thereafter shall follow). If ACTA and BNSF are unsuccessful in resolving such issue within 48 hours of meeting, either party may submit such issue to arbitration in a manner consistent with Section 33 of the BNSF Purchase Agreement. ACTA shall evaluate and consider HWI's and BNSF's timely comments and suggestions in good faith, provided that ACTA shall have no obligation to incorporate such comments or suggestions into the Plans and Specifications, or make any revisions or modifications to the Plans and Specifications in response thereto, except as provided in Section 2.1(c) below.

(c) BNSF's approval of the Plans and Specifications shall not be unreasonably withheld or conditioned, and any disapproval shall set forth in reasonable detail the reasons therefor. Plans and Specifications may be disapproved by BNSF only if, in BNSF's reasonable and good faith judgment: (a) the design of the Project is unsafe or fails to comply with any applicable law or regulation; (b) BNSF determines that any portion of the Plans and Specifications fail to meet BNSF's engineering standards (with respect to ACTA Work to be constructed on the BNSF Property), AREMA standards, or such other standards as may be agreed upon by BNSF and ACTA, as applicable; or (c) the Plans and Specifications are materially inconsistent with the Conceptual Design Layout. Except with respect to the time period therefor (which is governed by Section 2.1(b) above), BNSF's right to approve, disapprove or comment on any Plans and Specifications shall be no greater, and no less, than ACTA's right to approve or disapprove the Plans and Specifications, as set forth in the construction contracts. If any proposed Plans and Specifications are disapproved, the parties shall promptly meet and negotiate in good faith to attempt to mutually agree upon acceptable Plans and Specifications. If they are unsuccessful in resolving such dispute within 10 days thereafter, either party may submit such matter to arbitration in a manner consistent with Section 33 of the BNSF Purchase Agreement. Any material modification to any approved Plans and Specifications shall be subject to BNSF's approval in the manner described above.

(d) Any work to be performed by ACTA or its contractors which is not a part of the Plans and Specifications, and which affects the BNSF Property, shall not be commenced until such time as BNSF furnishes its written consent to commencement of such work. If it is determined that any portion of the Plans and Specifications does not meet BNSF's engineering standards (with respect to ACTA Work to be constructed on the BNSF Property), AREMA engineering standards, or such other standards as may be agreed upon by BNSF and ACTA, as applicable, ACTA shall modify the Plans and Specifications to satisfy the applicable engineering standards. Notwithstanding anything herein to the contrary, BNSF shall not be liable for the structural or hydrological design of the Project facilities (including, without limitation, any bridge, drainage facility, flyover, underpass, or overpass structure), other than for any portion of the Railroad Work designed by BNSF or its designers.

**2.2** After agreeing upon the Railroad Work and the ACTA Work as shown on Exhibits "A" and "A-1", such exhibits shall not be revised or altered without the mutual agreement of ACTA and BNSF. During the course of construction of the Project, if the Plans and Specifications or Exhibits "A" or "A-1" are modified pursuant to the mutual agreement of the parties then, upon completion of the Project, the parties shall execute a modification to this Agreement that will substitute in the place and stead of the original Exhibit "A" and Exhibit "A-1" the final version of such exhibits, showing any and all modifications made during the course of construction.

**2.3** ACTA shall make application to the Commission for an order authorizing construction of such portions of the Project that require Commission approval or authorization



pursuant to applicable law. ACTA shall furnish to the Commission copies of any Plans and Specifications for the Project (approved in the manner described in Section 2.1 above) required by the Commission, together with a copy of this Agreement.

2.4 As part of ACTA's initial construction of the Project, ACTA shall provide for minimum vertical and horizontal clearances, as required by the Commission.

2.5 ACTA shall acquire, and convey to BNSF at no cost, all easement or other ownership interests in land that are necessary for the construction of the Project, including but not limited to franchises for 26th Street covering construction of the southwest leg for the Wye (Track No. 6) for the San Pedro Branch, the realignment of the southeast leg of said Wye (Track No. 130), the realignment of Industry Spur Track No. 70 (as such tracks are shown on Exhibit "A") and the widening of the Downey Road Grade Separation. Notwithstanding the foregoing, except as set forth in the BNSF Purchase Agreement, neither ACTA nor the Ports will be required to pay BNSF for any of the BNSF Property or any additional property owned (in fee or easement) by BNSF which is used for or impacted by authorized construction of the Project or any of the Railroad Work.

2.6 ACTA shall provide BNSF with copies of any and all necessary permits and shall maintain roadway traffic controls, at no cost to BNSF, as may be required for construction of the portion of the Project that will affect the BNSF Property.

2.7 It is understood that this Agreement will not affect or authorize any change, modification or relocation of existing wire lines, pipe lines and other utility facilities on the BNSF Property. Any change, modification or relocation of such facilities, or the installation of any new utility facilities, on the BNSF Property necessitated by the construction of the Project shall be in accordance with that certain Letter Agreement dated June 12, 1997 between BNSF and ACTA covering the modification and/or relocation of utility lines (and ACTA and BNSF hereby agree that paragraph 3 of such Letter Agreement is modified to substitute "three years" for the words "two years" in the last line of that paragraph).

2.8 ACTA shall construct the Project, including the portions of the Project to be constructed by ACTA on the BNSF Property as shown on Exhibits "A" and "A-1". As between ACTA and BNSF, the Project shall be constructed at ACTA's expense, except: (i) as set forth in this Agreement or in the Corridor Operating Agreement, (ii) as shown on Exhibits "A" and "A-1", (iii) for the provisions set forth in the BNSF Purchase Agreement with respect to BNSF's contribution to the cost of the Watson Yard Connection, and (iv) as provided in contribution or funding agreements that ACTA and/or Ports have entered into with third parties. The work to be undertaken by ACTA on the BNSF Property with respect to the Project is referenced herein as "**ACTA Work**", and shall include the following principal elements (except to the extent such work is Railroad Work as described in Section 1.2):

- (a) All grading;
- (b) Modification, construction and/or extension of railroad bridges, culverts and drainage facilities;
- (c) Providing of suitable drainage, both temporary and permanent;

(d) Providing of engineering field control points and survey stakes and for the monumentation of property boundaries;

(e) The supplying and placement of K-Rail (Jersey) barriers or fences at times and locations requested by BNSF, in its sole and absolute discretion, to provide temporary barriers that will separate ACTA's contractor(s) from and cause them to remain a safe distance from BNSF's live tracks;

(f) Placement of the initial six (6) inches of rock ballast, in accordance with BNSF standards, on all new railroad bridges;

(g) Placement of the initial six (6) inches of rock ballast, in accordance with BNSF standards, on any new railroad roadbed constructed by ACTA's contractor;

(h) Construction of all retaining walls;

(i) Coordinating with BNSF for the removal of all encroachments located on BNSF property, at no cost or expense to BNSF (except as set forth in the Corridor Operating Agreement);

(j) Making of any and all necessary modifications to 26th Street as may be required by the City of Vernon, in connection with the retirement of certain spur tracks and the realignment of existing at-grade crossings and construction of a new at-grade crossing of the southwest leg of the Wye Track connection to Ports' San Pedro Branch (all as shown on Exhibit "A");

(k) Construction of a double main track connection to the Corridor from the west point of switch for the double main tracks to the Connection Point (as shown on Exhibit "A"), including construction of the Washington Boulevard Grade Separation;

(l) Removal and disposal of those portions of the 9th Street Yard located southerly of the bumping posts to be installed by BNSF;

(m) Removal and disposal of the existing Washington Boulevard Grade Separation of the Harbor Subdivision, P.U.C. No 2H-0.13, D.O.T. No. 027900U, and the construction of a new Washington Boulevard Grade Separation at substantially the same location so as to accommodate the construction of the double main track connection to the Corridor;

(n) Removal and disposal of the existing Washington Boulevard Grade Separation of the San Bernardino Subdivision, P.U.C. No. 2-143.2-B, D.O.T. No. 027629D, and those portions of the San Bernardino Subdivision's Main Tracks located between Redondo Junction and the Connection Point, including removal of the crossing diamonds at Redondo Junction;

(o) Construction of the Redondo Grade Separation Improvements, including grading, drainage, retaining walls and construction of those portions of LACMTA's North and South Main Tracks located on the flyover portion thereof, and located westerly of the beginning point of LACMTA's maintenance located at the east end of the flyover structure at BNSF MP 143.90;

(p) Removal and disposal of, and reconstruction of, the Soto Street Grade Separation, P.U.C. No. 2-143.6B, D.O.T. No. 027630X;

(q) Placement of waterproofing membrane on all new railroad bridges;

(r) Construction of all rail facilities required to maintain a direct connection from the 9th Street Yard to the Auto Dock Lead Track (as shown on Exhibit "A");

(s) Construction of a portion of the Watson Yard Connection (as shown on Exhibit "A-1");

(t) Upon notification by BNSF, removal and disposal of that portion of BNSF's signal pole line (poles and wire) located within the BNSF Property boundaries remaining after completion by BNSF of the Railroad Work;

(u) Placement of CPUC and DOT Crossing Numbers in conspicuous locations on the flyover portion of the Redondo Grade Separation Improvements and on all railroad street/highway grade separations shown on Exhibit "A";

(v) Widening of the existing Downey Road Grade Separation (as shown on Exhibit "A");

(w) Construction of an electronic rail car reader system and a wayside detection system (or such other systems upon which the operating committee for the Corridor may agree) for the Corridor;

(x) Construction of maintenance access roadways to and along BNSF's San Bernardino Subdivision, including permanent ingress and egress from public rights-of-way (as shown on Exhibit "A"); and

(y) Construction and/or replacement of existing fencing along the boundaries of BNSF's rail corridor with a six-foot commercial chain link fence equipped with locked gates as needed for LACMTA or BNSF access, all in the locations shown on Exhibit "A" (and in such other locations where existing fencing is removed or damaged, or to fill gaps in existing fencing resulting from the removal of buildings, in connection with constructing the Project).

ACTA shall be entitled to the proceeds from the salvage of all materials removed by ACTA or its contractors in connection with the ACTA Work (including materials required to be removed from the BNSF Property pursuant to this Section 2.8, except that BNSF may designate any materials on the BNSF Property that it does not want removed or salvaged).

**2.9** ACTA shall require its contractor(s) to submit to BNSF for its approval (which approval shall not be unreasonably withheld, conditioned or delayed) prior to commencement of construction activities in accordance therewith, a construction schedule which shall set forth the work to be performed by ACTA and/or its contractors on and near the BNSF Property pursuant to this Agreement, together with the estimated start and completion dates thereof, and which also shall provide for coordinating the schedules of the Railroad Work and the ACTA Work. The construction schedule may be changed from time to time as circumstances dictate, subject to the approval of the parties hereto, which approval shall not be unreasonably withheld, conditioned or delayed.

**2.10** ACTA shall require its contractor(s) to submit to BNSF, prior to the commencement of any ACTA Work on or near BNSF Property, the proposed methods and procedures of performing such work. BNSF shall have the right to approve such methods and procedures, which approval will not be unreasonably withheld, conditioned or delayed. BNSF will advise ACTA whether or not the proposed methods and procedures are satisfactory. In the event BNSF does not approve the proposed methods and procedures, BNSF will provide ACTA with written comments for the purpose of assisting ACTA and its contractor(s) in formulating methods and procedures which are acceptable to BNSF. ACTA shall not allow any of its contractors to commence any ACTA Work on the BNSF Property until such time as the methods and procedures of performing such work have been approved by BNSF in the manner described above.

**2.11** In the event that: (i) any ACTA contractor prosecutes the ACTA Work contrary to the Plans and Specifications or contrary to the covenants set forth in this Agreement; (ii) ACTA or any ACTA contractor prosecutes the ACTA Work in a manner which BNSF in good faith deems to be hazardous to the BNSF Property or facilities located thereon, or the safe and expeditious movements of BNSF's trains, passenger trains, locomotives and railroad cars thereon; or (iii) the insurance described in Section 3.4 is cancelled during the course of construction of the portion of the Project on the BNSF Property, then ACTA or its contractor(s) shall, upon notice given by BNSF, immediately discontinue performing the ACTA Work on the BNSF Property until such time as the acts or omissions giving rise to such work stoppage shall have been fully rectified to BNSF's reasonable satisfaction. Such work stoppage shall not give rise to, nor impose, any liability upon BNSF. The right of BNSF to cause the cessation of the ACTA Work is in addition to any other rights and remedies which BNSF may have, including without limitation, an action for actual damages or lost profits (as reasonably demonstrated by BNSF) arising from a failure of ACTA, or its contractor(s), to comply with any of terms of this Agreement.

**2.12** BNSF, acting in good faith, shall have the right to request that any ACTA employee, any ACTA contractor, or any employee of an ACTA contractor who performs any work on the BNSF Property and which affects BNSF's operations or facilities, be removed from the Project for incompetence, neglect of duty, unsafe conduct or misconduct. In the event ACTA or its contractor elects not to honor such request, BNSF may stop such ACTA Work on the BNSF Property until the matter has been fully resolved to BNSF's reasonable satisfaction. The party whose employee has been asked to leave the Project will indemnify the requesting party against any claims arising from such removal. ACTA's employees, agents, contractors, representatives and invitees shall wear the current BNSF Personnel Protective Equipment

("PPE") when on the BNSF Property. BNSF PPE shall meet applicable OSHA and ANSI specifications. Existing BNSF PPE requirements are: (i) safety glasses; permanently affixed side shields; no yellow lenses; (ii) hard hats with high visibility orange cover; (iii) safety shoes with hardened toe, above the ankle lace up and a defined heel; and (iv) high visibility reflective orange vests. Hearing protection, fall protection and respirators will be worn as required by state and federal regulations.

**2.13** ACTA shall furnish all labor, materials, tools, and equipment in performing the ACTA Work. All ACTA Work shall be performed at such times as shall not endanger or interfere with the safe and timely operations on BNSF's tracks and other facilities on and near the BNSF Property. BNSF shall cooperate in good faith with ACTA and its contractor(s) in scheduling times to conduct the ACTA Work on and near the BNSF Property (and BNSF acknowledges that the ACTA Work may cause delays to some local and light engine moves).

**2.14** ACTA shall require its contractor(s) to notify BNSF's Roadmaster a reasonable time (depending upon flagging requirements) in advance of initially commencing work on the BNSF Property, and also shall provide reasonable notice in advance of commencing or terminating any subsequent work on the BNSF Property, in order that BNSF may arrange for a BNSF flagman, in accordance with the requirements of Exhibit "C" attached hereto, to protect BNSF from damage to its trains and property.

**2.15** ACTA shall require its contractor(s) to furnish BNSF's Assistant Director of Public Projects, or his designated representative, for approval (which approval shall not be unreasonably withheld, conditioned or delayed), four copies of plans and two sets of calculations of any shoring or cribbing proposed to be used over, under, or adjacent to BNSF's tracks on the BNSF Property. The use of such shoring or cribbing shall conform to the standard side clearance set forth in the Commission's requirements which govern such clearance. In case the use of such shoring will impair said clearance, ACTA will ensure that application is made to the Commission for approval of such impairment during the period of construction of such portion of the Project.

**2.16** ACTA shall incorporate in each prime contract for construction of ACTA Work on the BNSF Property, or the specifications therefor, the provisions set forth in Exhibits "C" and "C-1" attached hereto and made a part hereof, and the provisions in Sections 2.9 through 2.15, 2.17(b) and 4.4 of this Agreement.

**2.17** Except as hereinafter otherwise provided, all ACTA Work on the BNSF Property will be performed pursuant to a contract or contracts to be let by ACTA, and all such contracts shall provide:

(a) That all work performed thereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans and Specifications approved in the manner set forth in Section 2.1 above; and

(b) That no work shall be commenced on the BNSF Property until each of the prime contractors employed in connection with said work shall have executed and delivered to BNSF a letter agreement in the form of Exhibit "C-1".

**2.18** ACTA shall advise each of BNSF's representatives designated in Section 5.3, in writing, of the completion date of the Project within thirty (30) days after such completion, and shall notify BNSF's representatives, in writing, of the date on which ACTA and/or its contractor will meet with BNSF for the purpose of making final inspection of the portions of the Project constructed on the BNSF Property.

### **ARTICLE III. INDEMNIFICATION AND INSURANCE**

During the period of construction of the ACTA Work and the Railroad Work (as used in this Article III, the term "period of construction" means the period commencing on the earlier of (i) the date on which ACTA gives BNSF the "notice to proceed" described in Section 1.6, and (ii) the date on which ACTA notifies BNSF that ACTA or its contractors will enter the BNSF Property to begin any portion of the ACTA Work, and ending upon completion of the ACTA Work and acceptance thereof by BNSF), the following provisions shall be applicable:

**3.1** To the maximum extent permitted by applicable law, ACTA shall indemnify, defend (with counsel reasonably acceptable to BNSF) and save harmless BNSF, and BNSF's successors and assigns, from and against all liability, claims, demands, losses, damages, or costs (collectively, "Claims") for: (a) death or bodily injury to persons including, without limitation, the employees of the parties hereto; or (b) physical damage to property (excluding, however, Claims for inverse condemnation, noise or vibrations), to the extent caused by the ACTA Work, or the presence on or near the BNSF Property of ACTA or its contractors, agents, representatives or invitees or any of their employees; and all expenses of investigating and defending against the same (including, without limitation, reasonable attorneys' fees and costs) (the foregoing matters are referred to in this Article III as "**Indemnified Matters**"). Nothing contained in this Section 3.1 is intended to, nor shall be deemed or construed to, require ACTA to indemnify BNSF to the extent Claims are caused by or arise from BNSF's negligence or willful misconduct (and the term "Indemnified Matters" shall not include any such Claims), or to the extent Claims are covered by BNSF's insurance described in Section 1.4 above.

**3.2** In furtherance of the provisions of Section 3.1, ACTA shall, at its own cost, defend BNSF in all suits, actions or other legal or administrative proceedings that may be brought or instituted against BNSF on account of any Indemnified Matter with counsel selected by ACTA and reasonably acceptable to BNSF. BNSF shall have the right to join and participate in (as a party if it so elects) any suits, actions, or other legal or administrative proceedings that may be brought or instituted against BNSF on account of any such Indemnified Matters. In any such case, BNSF may, at its own cost and expense, employ its own legal counsel and consultants to prosecute, negotiate, or defend any claim, action, or cause of action.

**3.3** Subject to the provisions of the Corridor Operating Agreement: (i) ACTA and Ports hereby expressly release BNSF from any and all Claims which may be suffered by or brought against ACTA or Ports with respect to the Indemnified Matters and any other

construction matters relating to the Project (other than the matters described in the following clause (ii)); and (ii) BNSF hereby expressly releases ACTA and Ports from and any and all Claims which may be suffered by or brought against BNSF with respect to death or bodily injury to persons, or physical damage to property, to the extent caused by BNSF's negligence or willful misconduct in conducting the Railroad Work, or to the extent covered by BNSF's insurance described in Section 1.4 above.

3.4 During the period of construction, ACTA shall maintain the following insurance for itself and all of its contractors and subcontractors:

(a) Commercial General Liability Insurance (including umbrella or excess liability insurance as necessary to achieve limits) for bodily injury, property damage, personal injury and advertising injury. Primary coverage shall be issued using Insurance Services Office Commercial General Liability "occurrence" form CG 0001 (or its equivalent), not excluding coverage for liability arising out of an agreement or contract in connection with construction or demolition operations on or near any railroad, with no exclusion for explosion, collapse or underground hazards. Total limits shall be no less than \$50 million per occurrence and aggregate.

(b) Workers' compensation and employer's liability insurance covering all contractors and subcontractors for statutory benefits. Employer's liability limits shall be no less than \$1 million per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy.

(c) Railroad Protective Liability insurance stating that BNSF is the named insured with a limit of at least \$5 million per occurrence and \$10 million in the aggregate. Coverage shall be issued on a standard ISO Form CG 00350196 (or equivalent) and endorsed to include ISO Form CG 28311093 (or equivalent) and a limited seepage and pollution endorsement.

3.5 If any Hazardous Material (as defined in the BNSF Purchase Agreement) is uncovered or excavated from or under the BNSF Property during the course of conducting the ACTA Work on the BNSF Property, or if ACTA or its contractors spill or discharge any Hazardous Material in, on or under the BNSF Property, then ACTA shall be solely responsible for the removal and disposal of any such Hazardous Material in compliance with applicable laws, and for losses, damages or costs resulting therefrom (except that the foregoing shall not include losses, damages or costs, including diminution of value, BNSF may incur because Hazardous Materials are present in, on or under the BNSF Property adjacent to the area from which ACTA removes Hazardous Materials). Neither ACTA nor its contractors shall identify BNSF as the generator of any such materials (provided that the foregoing shall not be interpreted to preclude ACTA or its contractors from disclosing the BNSF Property as the site from which such Hazardous Material was removed if such disclosure is required by applicable law). To the maximum extent permitted by applicable law, ACTA shall indemnify, defend (with counsel reasonably acceptable to BNSF) and save harmless BNSF, and BNSF's successors and assigns, from and against all Claims (including cost of defense and attorney's fees), which BNSF may incur, be responsible for, or pay as a result of injury to or death of any person, and for damage

(including environmental contamination and loss of use) to or loss of any property, including property of BNSF, arising out of or caused by a spill or discharge of any Hazardous Material by ACTA or its contractors, or ACTA's breach of its obligations in the first sentence of this Section 3.5. Notwithstanding anything to the contrary in this Section 3.5, (i) if any Hazardous Materials are discovered in, on or under the BNSF Property in the course of conducting the ACTA Work and such Hazardous Materials were not released by ACTA or its contractors, then ACTA shall be obligated to remediate only such portion of the BNSF Property necessary for ACTA to conduct the ACTA Work (and any soil excavated for purposes of conducting the ACTA Work), and ACTA shall have no liability or obligation with respect to Hazardous Materials that may be located in, on or under portions of the BNSF Property not used for the ACTA Work; and (ii) except to the extent ACTA assumed responsibility under the foregoing clause (i) of this Section 3.5 to remediate a portion of the BNSF Property for purposes of conducting the ACTA Work, ACTA shall have no obligation to indemnify, defend or hold harmless BNSF from or against any Claims, and BNSF shall not bring any Claims (including, without limitation, Claims for indemnity or contribution under any applicable law) against ACTA, arising from or caused by the spill or discharge of any Hazardous Material in, on or under the BNSF Property by persons or entities other than ACTA or Ports, or any of their respective contractor(s), agents, representatives or invitees, or any of their employees.

**3.6** The provisions of Sections 3.1 to 3.5, inclusive, shall survive the expiration or earlier termination of this Agreement, but only with respect to Claims arising during the period of construction of the ACTA Work and the Railroad Work.

#### **ARTICLE IV.**

##### **ADDITIONAL CONSTRUCTION AND RIGHT OF WAY MATTERS**

**4.1** All work contemplated in this Agreement shall be performed in a good and workmanlike manner and each portion shall be promptly commenced by the parties hereto obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

**4.2** All such work shall be done in accordance with any BNSF Plans (with respect to the Railroad Work) and the Plans and Specifications (with respect to the ACTA Work) approved in the manner set forth in this Agreement, and also subject to the Commission's approval (if required under applicable law), with minimum clearances of not less than those specified by the Commission, or as otherwise authorized by the Commission for BNSF's tracks on the BNSF Property.

**4.3** ACTA and BNSF shall, to the extent reasonably practicable, adhere to the construction schedule for all Project work. The parties agree that neither ACTA's failure to complete the ACTA Work nor BNSF's failure to complete the Railroad Work in accordance with the construction schedule by reason of inclement weather, unforeseen railroad emergencies, or other conditions beyond the reasonable control of the parties hereto, will constitute a breach of this Agreement by the party failing to so perform, nor subject the failing party to any liability or responsibility for added expense to the other party.



**4.4** In the event of an unforeseen railroad emergency and regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate all or a portion of its labor forces assigned to perform the Railroad Work when BNSF in good faith believes such reallocation is necessary to provide for the immediate restoration of railroad operations of BNSF or its affiliates or to protect persons or property on or near any BNSF owned property or any related railroad. BNSF will reassign such labor forces to again perform the Railroad Work when, in its sole but good faith opinion, such emergency condition no longer exists. BNSF will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces. The parties further agree that such reallocation of labor forces by BNSF and any direct or indirect results of such reallocation will not constitute a breach of this Agreement by BNSF.

**4.5** BNSF shall have no responsibility for the costs and expenses incurred in connection with construction of the Project (except (i) as set forth in this Agreement or in the Corridor Operating Agreement, (ii) as shown on Exhibits "A" and "A-1", and (iii) for the provisions set forth in the BNSF Purchase Agreement with respect to BNSF's contribution to the cost of the Watson Yard Connection). All costs incurred by ACTA under this Agreement shall be included in Net Project Costs.

**4.6** Upon completion and acceptance of the ACTA Work, ACTA, Ports or BNSF (as indicated below) shall grant or obtain the following easements or other rights (and the easements, quitclaim deeds or other conveyancing instruments to be executed by ACTA pursuant to this Section 4.6 shall be in the same form as the instruments to be executed by BNSF pursuant to this Section 4.6, and vice versa):

(a) ACTA shall grant to BNSF, at no cost to BNSF, a permanent non-exclusive roadway access easement from the 16th Street extension to the Los Angeles River running parallel with the Corridor in the vicinity of Butte Street, to be used by BNSF as access to its Auto Dock Lead Track (Track No. 255) and its 9th Street Yard facility.

(b) ACTA shall grant to BNSF, at no cost to BNSF, an exclusive permanent easement (100 feet in width), or instead shall convey such parcel to BNSF by quitclaim deed, in the location shown on Exhibit "A", for the purpose of constructing and maintaining the double main track connection to the Corridor, including construction of any subsequent tracks or railroad facilities on said easement, from the west point of switch for the double main tracks to the Connection Point.

(c) ACTA shall grant to BNSF, at no cost to BNSF, non-exclusive permanent easements for ingress and egress for maintenance purposes to BNSF's San Bernardino Subdivision from existing public thoroughfares, in the locations shown on Exhibit "A".

(d) ACTA shall grant to BNSF, at no cost to BNSF, permanent easements for railroad maintenance roads and installation and maintenance of railroad signal facilities, in the locations shown on Exhibit "A".

(e) ACTA shall grant to BNSF, at no cost to BNSF, an exclusive permanent easement for BNSF to reconnect and operate rail service over a rail corridor at least 15 feet from the centerline of the track comprising the southwest leg of the wye track (Track No. 6), having a curvature no greater than 12 degrees, as shown on Exhibit "A".

(f) ACTA shall grant to (or obtain for) BNSF, at no cost to BNSF, an exclusive permanent easement for BNSF to operate rail service, over property underlying that portion of BNSF's Auto Dock Lead Track located off of BNSF property, as shown on Exhibit "A", and ACTA also shall grant to BNSF, at no cost, a non-exclusive permanent easement, the width and location of which shall be finally determined by mutual agreement between BNSF and ACTA, for a related maintenance road that will be constructed off of BNSF's Property.

(g) BNSF shall grant to ACTA or Ports, at no cost to ACTA or Ports, an assignable permanent underground easement, 30 feet in width, for the installation, maintenance and use of a concrete box culvert and other utilities, and a non-exclusive easement over the surface of the underground easement and across BNSF's Auto Dock Lead Track property (Track No. 255) for use as a roadway access by Los Angeles County, Amtrak, ACTA, LADWP, MWD, BNSF and others as required and permitted by ACTA. BNSF shall grant any temporary construction work space needed for construction of the access road, the relocation of the box culvert and relocation of Amtrak's drain line.

(h) BNSF shall convey to LACMTA by quitclaim deed, at no cost to ACTA or Ports, all of BNSF's ownership interest in a parcel that covers that portion of the Redondo Grade Separation Improvements that are located on BNSF's Auto Dock Lead Track (Track No. 255) and its 9th Street Yard property, as shown on Exhibit "A".

(i) BNSF shall grant to LACMTA, at no cost to ACTA, Ports or LACMTA, a non-exclusive easement for access by LACMTA over BNSF's Auto Dock Lead Track (Track No. 255) property for maintenance purposes.

(j) BNSF shall grant to LACMTA, at no cost to ACTA, Ports or LACMTA, a non-exclusive easement or other rights sufficient for the east touchdown of the Redondo Grade Separation Improvements on, and the presence and maintenance of the Redondo Grade Separation Improvements over, BNSF's San Bernardino Subdivision, and the operation of passenger trains thereon.

(k) BNSF shall grant to Amtrak, at no cost to Amtrak, ACTA or Ports, a license for Amtrak's ten (10) inch drain line to be relocated under BNSF's Auto Dock Lead Track property (Track No. 255).

(l) If requested by ACTA on or before December 31, 2001, BNSF shall convey to ACTA or Ports by quitclaim deed, at no cost to ACTA or Ports, all (or any portion so requested by ACTA) of that portion of BNSF's San

Bernardino subdivision located between BNSF's northerly property line in the vicinity of the northerly line of Butte Street and a line measured 50 feet from, and parallel with the centerline of, BNSF's proposed new north connecting track, BNSF main #1, as shown on Exhibit "A".

(m) BNSF shall convey to ACTA or Ports by quitclaim deed, at no cost to ACTA or Ports, all of BNSF's ownership interest in ACTA parcel NE-040 (which does not include ownership of the signboard easement on such parcel.

(n) BNSF shall quitclaim to ACTA or Ports, at no cost to ACTA or Ports, all rights, title and interests in and to BNSF's San Bernardino Subdivision in Butte Street that underlies BNSF's Auto Dock Lead track property (Track No. 255).

BNSF agrees that, except as set forth in this Agreement, no further or additional permits, licenses or rights of entry from BNSF will be necessary in connection with the construction of portions of the Project on the BNSF Property.

4.7 Upon completion of the Redondo Grade Separation Improvements, BNSF shall assign to Ports, at no cost to ACTA or Ports, all of BNSF's right, title and interest under BNSF's agreement, dated January 15, 1906, with UP's predecessor-in-interest with respect to rail operations at Redondo Junction.

4.8 ACTA shall reimburse BNSF for its actual costs incurred in undertaking work of an emergency nature on the BNSF Property caused by any act or omission of ACTA or any of its contractors, agents, representatives or invitees, or any of their employees, in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or property, on or near the BNSF Property. Such work may be performed by BNSF without prior approval of ACTA (but BNSF shall promptly give ACTA notice of any such emergency and the steps taken to remedy such emergency) and ACTA agrees to reimburse BNSF for all such emergency work in the same manner and within the same time period as billings submitted in accordance with Section 1.10 above.

4.9 Upon completion of the portion of the Project constructed by ACTA on the BNSF Property, ACTA will furnish BNSF one set of as built plans, at no cost to BNSF, prepared in U.S. Customary Units, as well as one set of computer diskettes, containing as built CAD drawings of such portion of the Project and identifying the software used for the CAD drawings. Such "as built plans" shall depict all information in BNSF engineering stationing and mile post pluses. Such "as built plans" also shall include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities shall be shown. All right of way boundaries shall be distinguished by ownership and dimensioned with appropriate distances and bearings and shall have dimensioned references from right of way corners, angle points, and curve points to the centerline of adjacent tracks.

4.10 The books, papers, records and accounts of the parties hereto, insofar as they relate to the items of expense for labor and material or are in any way connected with the

work herein contemplated, shall at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto for a period of three (3) years from the date of final payment. If any such inspection or audit discloses that amounts were overpaid or underpaid, the parties shall make the appropriate adjustments, in cash, within thirty (30) days after presentation of an invoice showing the amount of such overpayment or underpayment, and any amount not so paid within thirty (30) days shall bear interest at the rate of 10% per annum until paid.

**4.11** As contemplated by Section 1.2(i) above, BNSF desires to assume dispatching control at Hobart Junction (which presently is dispatched by UP) as of the date of Substantial Completion (as defined in the Corridor Operating Agreement). BNSF acknowledges that BNSF's assumption of dispatching control at Hobart Junction is subject to the written consent of UP. Pursuant to letters dated September 29, 1998 and October 1, 1998, UP stated that it will not object to the transfer of dispatching functions to BNSF upon Substantial Completion. ACTA and Ports acknowledge that such dispatching control is in the best interest of efficient Corridor operations and, therefore, Ports agree to transfer such dispatching control to BNSF upon Substantial Completion. As between BNSF, on the one hand, and ACTA and Ports, on the other, all costs and expenses incurred in dispatching Hobart Junction, and all costs to maintain, repair and replace the facilities at and serving Hobart Junction, shall be borne by BNSF (except for the initial improvements thereto described in Section 1.2(i), which shall be reimbursed to BNSF by ACTA pursuant to this Agreement and treated as Net Project Costs), and neither ACTA or Ports shall have any liability or obligation with respect to any existing or future agreement between BNSF and UP relating to Hobart Tower.

**4.12** ACTA shall reimburse BNSF for any of the following amounts which BNSF reasonably demonstrates were incurred or lost by BNSF during and solely as a result of construction of the ACTA Work: (i) lost incentive payments under BNSF's agreements with Amtrak, LACMTA, OCTA or RCTC or under BNSF's transportation agreements (as all of such agreements exist as of the date of this Agreement) due to service delays; (ii) penalty payments made by BNSF under BNSF's transportation agreements (as they exist as of the date of this Agreement) for service delays; or (iii) breaches of BNSF's service performance guaranties in BNSF's transportation agreements (as they exist as of the date of this Agreement).

**4.13** Notwithstanding anything to the contrary set forth in this Agreement, neither ACTA nor Ports are obligated to construct the Project, or to construct the Project within any specified time period. Rather, the purpose of this Agreement is to provide for the parties' respective rights and obligations, and the manner of construction, if the Project is constructed (and if construction of the Project is terminated after construction commences, ACTA shall reimburse BNSF for any amounts incurred by BNSF, prior to such termination, in constructing any portion of the Railroad Work pursuant to this Agreement).

## **ARTICLE V. MISCELLANEOUS**

**5.1** All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the

foregoing, except as set forth in the Corridor Operating Agreement, no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.

**5.2** Specific separation of maintenance and ownership points between the BNSF Property and the Corridor shall be set forth in Exhibit "A" and Exhibit "A-1."

**5.3** Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by overnight delivery service, certified mail, return receipt requested, or by telecopy (when followed by a copy delivered by one of the other methods) to the parties at the following addresses:

The Burlington Northern and  
Santa Fe Railway Company:

740 East Carnegie Drive  
San Bernardino, CA 92408-3571  
Attn: Assistant Director Public Projects  
Telecopy No.: (909) 386-4479

With copies to:

Vice President and Chief Engineer  
2600 Lou Menk Drive  
Ft. Worth, Texas 76131-2830  
Telecopy No.: (817) 352-7413

and

Property and Transactions Counsel  
1600 East Golf Road  
Schaumburg, Illinois 60173-5860  
Telecopy No.: (847) 995-6846

Port of Los Angeles:

425 South Palos Verdes Street  
San Pedro, California 90733  
Attn: Executive Director  
Telecopy No.: (310) 732-0291

Port of Long Beach:

925 Harbor Plaza  
Long Beach, California 90801  
Attn: Executive Director  
Telecopy No.: (562) 901-1733

Alameda Corridor Transportation  
Authority:

One Civic Plaza, Suite 650  
Carson, CA 90745  
Attn: General Manager  
Telecopy No.: (310) 233-7483

Any party, by delivering written notice to the other parties to this Agreement in the manner set forth above, may change any representative or address to whom notice is to be given.

5.4 In the event of any conflict between this Agreement and the terms of the BNSF Purchase Agreement, the terms of this Agreement shall control.

5.5 The parties shall cooperate in good faith and with all due diligence to cause the Project to be completed in the manner described in this Agreement.

5.6 If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

5.7 Time is of the essence of this Agreement.

5.8 All recitals herein and exhibits attached hereto are incorporated herein by this reference.

5.9 The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto for any reason.

5.10 This Agreement shall be construed according to the substantive laws of the State of California without regard to its conflict-of-laws rules or principles.

5.11 This Agreement may be signed in one or more counterparts, and each shall constitute an original and all taken together shall constitute one agreement.

5.12 Each party signing this Agreement represents that it has the full authority and legal power to do so.

5.13 No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties. No provision of this Agreement shall be revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

5.14 In any action brought to declare the rights granted herein or to enforce the provisions of any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees, costs and expenses, (including fees for services rendered by a party's internal or staff counsel) both at trial and in connection with any appeal, in any amount determined by the court or arbitrator. The provisions of this Section 5.14 shall survive the entry of any judgment.

5.15 Each party shall execute all such instruments and documents and shall take in good faith all such actions as are reasonably necessary to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**"BNSF"**

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY**

Approved as to form this \_\_\_\_\_  
day of October, 1998

By: \_\_\_\_\_

Jeffrey R. Moreland

Its: Senior Vice President  
& Chief of Staff

\_\_\_\_\_  
Dennis W. Wilson  
Property & Transactions Counsel

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**"PORTS"**

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

Approved as to form this \_\_\_\_\_  
day of October, 1998.

**ROBERT E. SHANNON, City Attorney**

By: \_\_\_\_\_

Richard D. Steinke  
Executive Director  
Long Beach Harbor Department

By: \_\_\_\_\_

Richard L. Landes,  
Principal Deputy City Attorney

**[SIGNATURES CONTINUED ON NEXT PAGE]**

**CITY OF LOS ANGELES,**  
acting by and through the  
Board of Harbor Commissioners  
of the Port of Los Angeles

By: \_\_\_\_\_  
Larry A. Keller  
Executive Director  
Los Angeles Harbor Department

ATTEST:

By: \_\_\_\_\_  
Commission Secretary  
Los Angeles Harbor Dept.

Approved as to form this \_\_\_\_\_  
day of October, 1998.

JAMES K. HAHN, City Attorney

By: \_\_\_\_\_  
Winston F. Tyler  
Senior Assistant City Attorney

**"ACTA"**

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY,**  
a Joint Powers Authority

By: \_\_\_\_\_  
James C. Hankla  
Chief Executive Officer

Approved as to form this \_\_\_\_\_ day of October, 1998

By: \_\_\_\_\_  
Joseph Burton  
General Counsel



**EXHIBIT "A"**

**DIAGRAM OF BNSF PROPERTY, ACTA WORK AND RAILROAD WORK**

**EXHIBIT "A-1"**

**DIAGRAM OF WATSON YARD CONNECTION**

**EXHIBIT "A-2"**

**TRACK SCHEMATIC DRAWINGS**

**EXHIBIT "B"**

**FORCE ACCOUNT BUDGET FOR RAILROAD WORK**

## EXHIBIT "B"

| ESTIMATED COST BNSF WORK   | COST                |
|--|---------------------|
| <b>PROJECT</b>   |                     |
| <b>PRELIMINARY WORK</b>  |                     |
| Preliminary Engineering - Contract Preparation (prior years through Year 1998) | \$750,000 *         |
| <b>TOTAL PRELIMINARY WORK</b>  | <b>\$750,000 *</b>  |
| <b>PHASE I</b>   |                     |
| Install Electric Lock Switch West Leg Wye                                      | \$65,084            |
| Construct West Leg Wye to San Pedro Branch                                     | \$707,000           |
| Construct L.A. River Yard (Replace 9th. Street Yard)                           | \$2,261,996         |
| Soto St - Flyover Phasing  | \$705,654           |
| Auto Dock Lead Track Cutovers, Removal Conc Box work, 9th. St. Yard work       | \$690,843           |
| Install Private Crossing Auto Dock Lead  | \$80,280            |
| <b>TOTAL PHASE I</b>   | <b>\$4,510,857</b>  |
| <b>PHASE II</b>  |                     |
| Review and Approve Signal Plans and Specifications Mid Corridor                | \$60,000            |
| Install Electrocode MP143.2 - MP 144.5   | \$442,258           |
| Install Cantilever flashers at 26th. St across Trks 6, 70 & 130                | \$614,347           |
| <b>TOTAL PHASE II</b>  | <b>\$1,116,605</b>  |
| <b>PHASE III</b>   |                     |
| Remaining Signal Work  | \$6,666,894         |
| North End Alignment (Eastward Expansion) including Security                    | \$17,429,071        |
| Slauson Ave cutovers   | \$254,553           |
| <b>TOTAL PHASE III</b>   | <b>\$24,350,518</b> |
| <b>TOTAL ESTIMATED COST BNSF WORK</b>  | <b>\$30,727,980</b> |
| <b>NEGOTIATED CONTINGENCY</b>  | <b>\$1,272,020</b>  |
| <b>GRAND TOTAL ESTIMATED COST TO ACTA FOR BNSF WORK</b>                        | <b>\$32,000,000</b> |
| 9/29/1998 11:32  |                     |

\*To the extent that this line item includes amounts for the fees and expenses of BNSF's outside counsel, ACTA's obligation to reimburse BNSF for such amounts shall be governed by the provisions of Section 1.5 of the Agreement.

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONCO JUNCT TO HOBART J DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION  
SUPPLEMENTAL AFE DUE TO CHANGE IN SCOPE AND DESIGN, 100% BILLABLE TO ACTA.

| DESCRIPTION                            | QUANTITY | U/M | COST    | TOTAL \$ |
|--|----------|-----|---------|----------|
| *****<br>LABOR<br>*****                |          |     |         |          |
|  |          |     | 0       | 0        |
| *****<br>TOTAL LABOR COST              |          |     |         |          |
| *****<br>MATERIAL<br>*****             |          |     |         |          |
|  |          |     | 0       | 0        |
| *****<br>TOTAL MATERIAL COST           |          |     |         |          |
| *****<br>OTHER<br>*****                |          |     |         |          |
| ADDITIONAL ENGINEERING AND PLAN REVIEW | 1.00     | LS  | 250,000 |          |
| ENGINEERING AND PLAN REVIEW            | 1.00     | LS  | 500,000 |          |
|  |          |     | 750,000 | 750,000  |
| TOTAL OTHER ITEMS COST                 |          |     |         |          |
| PROJECT SUBTOTAL                       |          |     |         | 750,000  |
| CONTINGENCIES                          |          |     |         | 0        |
| GROSS PROJECT COST                     |          |     |         | 750,000  |
| LESS COST PAID BY BNSF                 |          |     |         | 0        |
| TOTAL ESTIMATED COST                   |          |     |         | 750,000  |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A

LOCATION - REDONDO JUNCT TO HOBART J DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

HOBART, CA.: INSTALL ELECTRIC SWITCH LOCK ON WEST LEG OF WYE TRACK.  
SOUTH CALIFORNIA DIV., SAN BERNARDINO SUBDIV., L/S 7600, MP 144.5.

### PURPOSE:

INSTALL SWITCH LOCK ON EXISTING SOUTH MAIN TRACK FOR TEMPORARY CONNECTION TRACK TO THE  
UPRR DURING CONSTRUCTION OF NEW 4TH MAIN TRACK BETWEEN HOBART AND REDONDO JCT.

\*\*\*\*\*SIGNAL WORK ONLY\*\*\*\*\*

### INSULATED JOINTS REQUIRED:

INSTALL (2) INSULATED JOINTS ON SOUTH MAIN TRACK.  
INSULATE NEW SWITCH

| DESCRIPTION                       | QUANTITY | U/M | COST   | TOTAL \$ |
|-----------------------------------|----------|-----|--------|----------|
| *****                             |          |     |        |          |
| LABOR                             |          |     |        |          |
| *****                             |          |     |        |          |
| SIGNAL FIELD LABOR                | 280.00   | MH  | 5,619  |          |
| PAYROLL ASSOCIATED COSTS          |          |     | 3,972  |          |
| EQUIPMENT EXPENSES                |          |     | 1,777  |          |
| SUPERVISION EXPENSES              |          |     | 6,119  |          |
|                                   |          |     |        |          |
| TOTAL LABOR COST                  |          |     | 17,487 | 17,487   |
| *****                             |          |     |        |          |
| MATERIAL                          |          |     |        |          |
| *****                             |          |     |        |          |
| ELECTROLOCK 1TK, HSE, RACK, MISC. | 1.00     | EA  | 34,201 |          |
| STORE EXPENSES                    |          |     | 845    |          |
| USE TAX                           |          |     | 2,804  |          |
| OFFLINE TRANSPORTATION            |          |     | 431    |          |
|                                   |          |     |        |          |
| TOTAL MATERIAL COST               |          |     | 38,281 | 38,281   |
| *****                             |          |     |        |          |
| OTHER                             |          |     |        |          |
| *****                             |          |     |        |          |
| CONTRACT ENGINEERING - SIGNAL     | 1.00     | LS  | 2,000  |          |
| EQUIPMENT RENTAL                  | 1.00     | LS  | 1,400  |          |
|                                   |          |     |        |          |
| TOTAL OTHER ITEMS COST            |          |     | 3,400  | 3,400    |
|                                   |          |     |        |          |
| PROJECT SUBTOTAL                  |          |     |        | 59,168   |
| CONTINGENCIES                     |          |     |        | 5,916    |
|                                   |          |     |        |          |
| GROSS PROJECT COST                |          |     |        | 65,084   |
| LESS COST PAID BY BNSF            |          |     |        | 0        |
|                                   |          |     |        |          |
| TOTAL ESTIMATED COST              |          |     |        | 65,084   |

## EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT WEST LEG OF WYE AS FOLLOWS:

- \* CONSTRUCT 620 T.F. OF TRACK INCLUDING 2-#11 POWER TURNOUTS.
- \* CONSTRUCT NEW 80 FT ROAD CROSSING OVER 26TH STREET.

FIELD INFORMATION PROVIDED BY LARRY LONG INCLUDING A SKETCH (NO DATE (OR REFERENCE NO.)) ON 5/12/98. (REVISED FIELD NOTES 22 MAY 1998).

ADDED THE FOLLOWING ON 9 MAY 1998 (LARRY LONG)

- \* 80 TIES, 440 L<sup>F</sup> RAIL, 280 PANDROL PLATES, 420 PANDROL CLIPS, 420 TRACK SPIKES, 640 LOCK SPIKES & 400 NT OF BALLAST.
- \* 5 DAYS CONSTRUCTION GANG, 3 DAYS SURFACING, 3 DAYS WATER TRUCK & 2 DAYS LOADER.
- \* \$3,000 ENGINEERING & \$10,000 PAVING.

TRACK WORK ONLY.

10 JUNE 1998, LARRY LONG CHANGED QTM TO THE FOLLOWING:

- \* 550 - 136 LB STANDARD PLATES, 280 - 136 L. CURVE BLOCKS, 1000 - 136 LB. NEW ANCHORS, 3000 NEW SPIKES, 14000 NEW SCREW SPIKES & \$130000 SIGNAL COST.

| DESCRIPTION                   | QUANTITY | U/M | COST   | TOTAL \$ |
|-------------------------------|----------|-----|--------|----------|
| *****                         |          |     |        |          |
| LABOR                         |          |     |        |          |
| *****                         |          |     |        |          |
| MOBILIZATION - PLACE RAIL/OTM | 120.00   | MH  | 1,873  |          |
| PLACE CROSS TIES              | 480.00   | MH  | 7,494  |          |
| PLACE FIELD WELDS             | 288.00   | MH  | 4,869  |          |
| PLACE PUBLIC CROSSING         | 248.00   | MH  | 3,790  |          |
| PLACE RAIL/OTM                | 1080.00  | MH  | 16,861 |          |
| PLACE TURNOUT                 | 960.00   | MH  | 14,988 |          |
| SURFACE TRACK                 | 192.00   | MH  | 3,195  |          |
| UNLOAD BALLAST                | 96.00    | MH  | 1,597  |          |
| UNLOAD CROSS TIES             | 32.00    | MH  | 490    |          |
| UNLOAD RAIL/OTM               | 64.00    | MH  | 979    |          |
| WORK TRAIN - BALLAST          | 36.00    | MH  | 719    |          |
| WORK TRAIN - PLACE CROSS TIES | 48.00    | MH  | 958    |          |
| WORK TRAIN - UNLOAD RAIL/OTM  | 28.80    | MH  | 575    |          |
| PAYROLL ASSOCIATED COSTS      |          |     | 41,267 |          |
| EQUIPMENT EXPENSES            |          |     | 39,743 |          |
| SUPERVISION EXPENSES          |          |     | 63,585 |          |
| PERDIEM EXPENSES              |          |     | 29,700 |          |

TOTAL LABOR COST

232,683

232,683

\*\*\*\*\*  
MATERIAL

|  |         |    |        |  |
|--|---------|----|--------|--|
| ANCHOR, RAIL, UNIT, 6 IN BASE, 132#/136#           | 1000.00 | EA | 720    |  |
| BALLAST, GENERIC                                   | 1300.00 | NT | 11,700 |  |
| CURVE BLOCK, 136# OR132#, 510282004-N, ASMBLY      | 280.00  | EA | 2,310  |  |
| PLATE, TIE, 6 IN BASE, DS                          | 550.00  | EA | 2,613  |  |
| PLUG, RAIL, INSULATED, BONDED, 20 FT               | 4.00    | EA | 2,196  |  |
| POST, SIGN, 6 FT STEEL POINTED END                 | 4.00    | EA | 27     |  |
| RAIL, 136 LB NEW WELDED :                          | 1400.00 | LF | 19,054 |  |
| SIGN, ADVANCE WARNING, HIGHWAY XING                | 2.00    | EA | 73     |  |
| SIGN, CROSSING WHISTLE, W/LETTER W                 | 2.00    | EA | 7      |  |
| SPIKE, TIMBER SCREW                                | 1400.00 | EA | 1,260  |  |
| SPIKE, TIMBER SCREW, 5/8X12 IN, F/ROAD XING        | 120.00  | EA | 113    |  |
| TRACK SPIKES, NEW                                  | 3000.00 | EA | 690    |  |
| TIE, TRK, 10", PRE-PLATED, PANDROL, 6", ROUND HOLE | 20.00   | EA | 1,345  |  |
| TIE, TRK, 10", PRE-PLATED, PANDROL, 6", ROUND HOLE | 73.00   | EA | 4,909  |  |
| TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT       | 380.00  | EA | 11,180 |  |
| T.O., 136-11 LH POWER RBM FROG 19.6 PT:            | 1.00    | EA | 54,950 |  |
| T.O., 136-11 RH POWER RBM FROG 19.6 PT:            | 1.00    | EA | 54,950 |  |
| WELD, KIT FOR ALL RAIL WEIGHTS                     | 60.00   | KT | 3,930  |  |
| CONC 136 CB-SEC WITH FILLER FOR WOOD               | 80.00   | TF | 10,800 |  |
| STORE EXPENSES                                     |         |    | 4,516  |  |
| ONLINE TRANSPORTATION                              |         |    | 13,474 |  |
| USE TAX  |         |    | 14,986 |  |
| OFFLINE TRANSPORTATION                             |         |    | 1,696  |  |

TOTAL MATERIAL COST

217,499

217,499

\*\*\*\*\*



|                                    |       |     |         |
|------------------------------------|-------|-----|---------|
| *****                              |       |     |         |
| DUMP FEES                          | 1.00  | LS  | 5,000   |
| DUMP TRUCK                         | 1.00  | DAY | 1,000   |
| LOADER                             | 6.00  | DAY | 13,200  |
| MISCELLANEOUS ENGINEERING EXPENSES | 1.00  | LS  | 7,000   |
| MOTOR GRADER                       | 1.00  | DAY | 2,000   |
| PAVING, STRIPING, DETOURS          | 1.00  | LS  | 22,000  |
| SIGNAL WORK                        | 1.00  | LS  | 130,000 |
| WALKWAYS                           | 1.00  | LS  | 2,800   |
| WATER TRUCK                        | 10.00 | DAY | 10,000  |
|                                    |       |     |         |
| TOTAL OTHER ITEMS COST             |       |     | 193,000 |
|                                    |       |     | 193,000 |
| PROJECT SUBTOTAL                   |       |     | 643,182 |
| CONTINGENCIES                      |       |     | 63,818  |
|                                    |       |     |         |
| GROSS PROJECT COST                 |       |     | 707,000 |
| LESS COST PAID BY BNSF             |       |     | 0       |
|                                    |       |     |         |
| TOTAL ESTIMATED COST               |       |     | 707,000 |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT

## DETAILS OF ESTIMATE

### PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT L.A. RIVER YARD, 7,500 TF OF 136 LB. SH CWR STORAGE TRACK INCLUDING 5-#11-136# TURNOUTS AND 10-136 LB. TRACK PANELS.  
RETIRE 4 #7 AND #8 TURNOUTS, PLACE 12-115 LB. TRACK PANELS.  
EXTEND 8' X 14' DOUBLE BOX CULVER BY 20 FT.

| DESCRIPTION                   | QUANTITY | U/M | COST    | TOTAL \$ |
|-------------------------------|----------|-----|---------|----------|
| *****<br>LABOR<br>*****       |          |     |         |          |
| PLACE CROSS TIES              | 1232.00  | MH  | 20,461  |          |
| PLACE FIELD WELDS             | 528.00   | MH  | 8,781   |          |
| PLACE RAIL/OTM                | 3304.00  | MH  | 54,873  |          |
| PLACE SWITCH TIES             | 504.00   | MH  | 8,370   |          |
| REMOVE OTM                    | 784.00   | MH  | 13,021  |          |
| REMOVE SWITCH TIES            | 392.00   | MH  | 6,510   |          |
| SURFACE TRACK                 | 576.00   | MH  | 8,952   |          |
| UNLOAD BALLAST                | 192.00   | MH  | 2,984   |          |
| WORK TRAIN - BALLAST          | 240.00   | MH  | 4,693   |          |
| WORK TRAIN - PLACE CROSS TIES | 120.00   | MH  | 2,346   |          |
| WORK TRAIN - UNLOAD RAIL/OTM  | 360.00   | MH  | 7,039   |          |
| PAYROLL ASSOCIATED COSTS      |          |     | 97,560  |          |
| EQUIPMENT EXPENSES            |          |     | 93,958  |          |
| SUPERVISION EXPENSES          |          |     | 147,542 |          |
| PERDIEM EXPENSES              |          |     | 69,930  |          |

### TOTAL LABOR COST

547,020 547,020

### MATERIAL

|   |          |       |         |  |
|---|----------|-------|---------|--|
| *****<br>ANCHOR, RAIL, UNIT, 6 IN BASE, 132#/136# | 8460.00  | EA    | 6,091   |  |
| BALLAST, GENERIC                                  | 5800.00  | NT    | 52,200  |  |
| JOINT, COMPROMISE, A & B                          | 20.00    | PR    | 3,540   |  |
| JOINT, COMPROMISE, LH, 3L & 4L                    | 10.00    | PR    | 1,770   |  |
| JOINT, COMPROMISE, RH, 1R & 2R                    | 10.00    | PR    | 1,770   |  |
| TRACK PANEL, 112/115 LB 39 FT RAIL-TIES-OTM       | 12.00    | EA    | 29,873  |  |
| TRACK PANEL, 136 LB 39 FT RAIL-TIES-OTM           | 10.00    | EA    | 27,045  |  |
| PLATE, TIE, SH, 6 IN BASE, DS                     | 8460.00  | EA RX | 11,252  |  |
| TURNOUT, 136 LB 11 LH MANUAL RBM PRE-PLATED T     | 2.00     | EA    | 106,272 |  |
| TURNOUT, 136 LB 11 RH MANUAL RBM PRE-PLATED T     | 3.00     | EA    | 159,408 |  |
| RAIL, 136 LB NEW WELDED :                         | 2800.00  | LF    | 38,108  |  |
| RAIL, 136 LB SH SC WELDED :                       | 13750.00 | LF R  | 103,538 |  |
| TRACK SPIKES, NEW                                 | 16920.00 | EA    | 3,892   |  |
| STQ, SWITCH, HI, W/TRI_HND, TARGET, CONN_ROD      | 5.00     | EA    | 4,191   |  |
| TIE, SWITCH, TREATED, HARDWOOD 10 FT              | 170.00   | EA    | 6,610   |  |
| TIE, SWITCH, TREATED, HARDWOOD 11 FT              | 50.00    | EA    | 2,191   |  |
| TIE, SWITCH, TREATED, HARDWOOD 12 FT              | 40.00    | EA    | 1,883   |  |
| TIE, SWITCH, TREATED, HARDWOOD 13 FT              | 35.00    | EA    | 1,867   |  |
| TIE, SWITCH, TREATED, HARDWOOD 14 FT              | 35.00    | EA    | 1,979   |  |
| TIE, SWITCH, TREATED, HARDWOOD 15 FT              | 35.00    | EA    | 2,168   |  |
| TIE, SWITCH, TREATED, HARDWOOD 16 FT              | 40.00    | EA    | 2,643   |  |
| TIE, SWITCH, TREATED, HARDWOOD 17 FT              | 35.00    | EA    | 2,770   |  |
| TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT      | 4230.00  | EA    | 124,447 |  |
| WELD, KIT FOR ALL RAIL WEIGHTS                    | 132.00   | KT    | 8,646   |  |
| STORE EXPENSES                                    |          |       | 14,557  |  |
| ONLINE TRANSPORTATION                             |          |       | 105,162 |  |
| USE TAX   |          |       | 48,315  |  |
| OFFLINE TRANSPORTATION                            |          |       | 4,584   |  |

### TOTAL MATERIAL COST

876,772 876,772

### OTHER

|                                     |          |     |         |  |
|-------------------------------------|----------|-----|---------|--|
| *****<br>ENGINEERING AND INSPECTION | 1.00     | LS  | 100,000 |  |
| EXTEND 8' X 14' DOUBLE BOX CULVERT  | 20.00    | FT  | 50,000  |  |
| GRADING                             | 14900.00 | CY  | 250,022 |  |
| LOADER, BUILD SWITCHES              | 15.00    | DAY | 33,000  |  |
| LOADER, BUILD TRACK                 | 28.00    | DAY | 61,600  |  |

### TOTAL OTHER ITEMS COST

494,622 494,622

PROJECT SUBTOTAL  
CONTINGENCIES

1,918,414  
343,582

GROSS PROJECT COST  
LESS COST PAID BY BNSF

2,261,996  
0

### TOTAL ESTIMATED COST

2,261,996

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION  
SOTO STREET AND FLYOVER PHASING COSTS.

- \* CONSTRUCT NORTH AND SOUTH MAIN TRACK SHOOFLYS FOR CONSTRUCTION OF NEW SOTO AND FLYOVER BRIDGE STRUCTURES.
- \* PLACE 29 TRACK PANELS AND LINEOVER 1,500 TF OF TRACK.
- \* RETIRE 1,650 TF OF EXISTING MAIN TRACK.
- \* CONSTRUCT 650 TF OF NEW SOUTH MAIN TRACK. ( NOTE: CONSTRUCTION OF OTHER 1,000 TF IN EASTWARD EXPANSION ESTIMATE ).

\*\*\* ESTIMATE DOES NOT INCLUDE REMOVAL OF EXISTING NORTH MAIN TRACK, SOUTH MAIN TRACK, LEAD TRACK BRIDGES OR ANY SIGNAL COSTS.  
FIELD INFORMATION PROVIDED BY LARRY LONG ON 21 MAY 1998 WITHOUT A SKETCH.

| DESCRIPTION                                  | QUANTITY | U/M | COST    | TOTAL \$ |
|--|----------|-----|---------|----------|
| *****  |          |     |         |          |
| LABOR  |          |     |         |          |
| *****  |          |     |         |          |
| FLAGGING                                     | 3200.00  | MH  | 47,232  |          |
| PLACE CROSS TIES                             | 237.00   | MH  | 3,700   |          |
| PLACE FIELD WELDS                            | 416.00   | MH  | 7,033   |          |
| PLACE RAIL/OTM                               | 227.00   | MH  | 3,544   |          |
| PLACE TRACK PANELS                           | 154.00   | MH  | 2,404   |          |
| REMOVE CROSS TIES                            | 162.00   | MH  | 2,529   |          |
| REMOVE RAIL/OTM                              | 187.00   | MH  | 2,919   |          |
| SURFACE TRACK                                | 150.00   | MH  | 2,496   |          |
| UNLOAD BALLAST                               | 74.00    | MH  | 1,231   |          |
| UNLOAD CROSS TIES                            | 72.00    | MH  | 1,102   |          |
| UNLOAD RAIL/OTM                              | 250.00   | MH  | 3,826   |          |
| UNLOAD TRACK PANELS                          | 62.00    | MH  | 949     |          |
| WORK TRAIN - BALLAST                         | 90.00    | MH  | 1,797   |          |
| WORK TRAIN - PICKUP RAIL                     | 41.00    | MH  | 819     |          |
| WORK TRAIN - PLACE CROSS TIES                | 121.00   | MH  | 2,416   |          |
| WORK TRAIN - UNLOAD RAIL/OTM                 | 12.00    | MH  | 240     |          |
| PAYROLL ASSOCIATED COSTS                     |          |     | 59,539  |          |
| EQUIPMENT EXPENSES                           |          |     | 57,340  |          |
| SUPERVISION EXPENSES                         |          |     | 91,732  |          |
| PERDIEM EXPENSES                             |          |     | 10,880  |          |
| TOTAL LABOR COST                             |          |     | 303,728 | 303,728  |
| *****  |          |     |         |          |
| MATERIAL                                     |          |     |         |          |
| *****  |          |     |         |          |
| ANCHOR, RAIL, UNIT, 6 IN BASE, 132#/136#     | 1100.00  | EA  | 792     |          |
| BALLAST, GENERIC                             | 3200.00  | NT  | 28,800  |          |
| TRACK PANEL, 136 LB 39 FT RAIL-TIES-OTM      | 29.00    | EA  | 78,431  |          |
| PLATE, TIE, 6 IN BASE, DS                    | 900.00   | EA  | 4,275   |          |
| RAIL, 136 LB NEW WELDED :                    | 1300.00  | LF  | 17,693  |          |
| TRACK SPIKES, NEW                            | 4000.00  | EA  | 920     |          |
| TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT | 450.00   | EA  | 13,239  |          |
| WELD, KIT FOR ALL RAIL WEIGHTS               | 20.00    | KT  | 1,310   |          |
| STORE EXPENSES                               |          |     | 3,593   |          |
| ONLINE TRANSPORTATION                        |          |     | 30,967  |          |
| USE TAX                                      |          |     | 11,922  |          |
| OFFLINE TRANSPORTATION                       |          |     | 1,081   |          |
| TOTAL MATERIAL COST                          |          |     | 193,023 | 193,023  |
| *****  |          |     |         |          |
| OTHER  |          |     |         |          |
| *****  |          |     |         |          |
| DUMP FEES                                    | 1.00     | LS  | 10,000  |          |
| DUMP TRUCK                                   | 6.00     | LS  | 6,000   |          |
| ENGINEERING LAYOUT/DESIGN                    | 1.00     | LS  | 10,000  |          |
| GRADER                                       | 3.00     | DAY | 6,000   |          |
| INSPECTOR                                    | 1.00     | LS  | 50,000  |          |
| LOADER                                       | 25.00    | DAY | 50,000  |          |
| WATER TRUCK                                  | 16.00    | DAY | 16,000  |          |
| TOTAL OTHER ITEMS COST                       |          |     | 148,000 | 148,000  |
| PROJECT SUBTOTAL                             |          |     |         | 644,751  |
| CONTINGENCIES                                |          |     |         | 60,903   |
| GROSS PROJECT COST                           |          |     |         | 705,654  |
| LESS COST PAID BY BNSF                       |          |     |         | 0        |
| TOTAL ESTIMATED COST                         |          |     |         | 705,654  |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT

DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION  
AUTO DOCK LEAD

- \* REMOVE AND REPLACE 3 TRACK PANELS FOR ACTA'S CONTRACTOR TO INSTALL A BOX CULVERT.
- \* TRACK PANELS WILL BE REMOVED AND REPLACED ON THE AUTO DOCK LEAD.
- \* RETIRE PORTIONS OF 9TH STREET YARD TO FACILITATE CONSTRUCTION OF REDONDO FLYOVER.
- \* RENEW 30 TIES AND 3 END BUMPERS.
- \* RETIRE APPROXIMATELY 2000 TF OF YARD TRACK AND SWITCHES.
- \* ON AUTO DOCK LEAD, CONSTRUCT 2 - #15 TURNOUTS, LINEOVER AND LINEBACK 2000 TF OF TRACK AND UPGRADE EXISTING TRACK FOR LINEOVER WITH 40% TIES.

ESTIMATE DOES NOT INCLUDE SIGNAL OR CIVIL WORK.  
FIELD INFORMATION PROVIDED BY LARRY LONG ON 10 JUNE 1998 WITHOUT DRAWING.

| DESCRIPTION  | QUANTITY | U/M | COST    | TOTAL \$ |
|--|----------|-----|---------|----------|
| *****  |          |     |         |          |
| LABOR  |          |     |         |          |
| *****  |          |     |         |          |
| ADJUST RAIL/OTM                                    | 1457.00  | MH  | 22,747  |          |
| FLAGGING   | 3120.00  | MH  | 46,051  |          |
| PLACE FIELD WELDS                                  | 480.00   | MH  | 8,115   |          |
| PLACE TURNOUT                                      | 960.00   | MH  | 14,988  |          |
| REMOVE CROSS TIES                                  | 197.00   | MH  | 3,076   |          |
| REMOVE RAIL/OTM                                    | 160.00   | MH  | 2,498   |          |
| REPLACE CROSS TIES                                 | 106.00   | MH  | 1,655   |          |
| SURFACE TRACK                                      | 224.00   | MH  | 3,727   |          |
| UNLOAD BALLAST                                     | 72.00    | MH  | 1,102   |          |
| UNLOAD CROSS TIES                                  | 24.00    | MH  | 367     |          |
| WORK TRAIN - BALLAST                               | 28.00    | MH  | 559     |          |
| WORK TRAIN - PICKUP RAIL                           | 26.00    | MH  | 519     |          |
| WORK TRAIN - PICKUP TIES                           | 48.00    | MH  | 958     |          |
| WORK TRAIN - PLACE CROSS TIES                      | 6.00     | MH  | 120     |          |
| WORK TRAIN - UNLOAD TURNOUT                        | 84.00    | MH  | 1,677   |          |
| PAYROLL ASSOCIATED COSTS                           |          |     | 76,447  |          |
| EQUIPMENT EXPENSES                                 |          |     | 73,624  |          |
| SUPERVISION EXPENSES                               |          |     | 117,783 |          |
| PERDIEM EXPENSES                                   |          |     | 34,920  |          |
| TOTAL LABOR COST                                   |          |     | 410,933 | 410,933  |
| *****  |          |     |         |          |
| MATERIAL   |          |     |         |          |
| *****  |          |     |         |          |
| ANCHOR, RAIL, UNIT, 5.5 IN BASE, 115#              | 1040.00  | EA  | 759     |          |
| BALLAST, GENERIC                                   | 654.00   | NT  | 5,886   |          |
| BUMPING POST, HAYES :                              | 3.00     | EA  | 3,129   |          |
| JOINT, COMPROMISE, LH, 3L & 4L                     | 4.00     | PR  | 708     |          |
| JOINT, COMPROMISE, RH, 1R & 2R                     | 4.00     | PR  | 708     |          |
| TRACK PANEL, 112/115 LB 39 FT RAIL-TIES-OTM        | 3.00     | EA  | 7,468   |          |
| PLUG, RAIL, INSULATED, BONDED, 20 FT               | 4.00     | EA  | 2,196   |          |
| TRACK SPIKES, NEW                                  | 1200.00  | EA  | 276     |          |
| TIE, TRK, 10', PRE-PLATED, PANDROL, 6", ROUND HOLE | 20.00    | EA  | 1,345   |          |
| TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT       | 290.00   | EA  | 8,532   |          |
| T.O., 136-15 LH POWER RBM FROG 30 PT :             | 1.00     | EA  | 73,260  |          |
| T.O., 136-15 RH POWER RBM FROG 30 PT :             | 1.00     | EA  | 73,260  |          |
| WELD, KIT FOR ALL RAIL WEIGHTS                     | 44.00    | KT  | 2,882   |          |
| STORE EXPENSES                                     |          |     | 4,455   |          |
| ONLINE TRANSPORTATION                              |          |     | 6,677   |          |
| USE TAX  |          |     | 14,790  |          |
| OFFLINE TRANSPORTATION                             |          |     | 2,074   |          |
| TOTAL MATERIAL COST                                |          |     | 208,405 | 208,405  |
| *****  |          |     |         |          |
| OTHER  |          |     |         |          |
| *****  |          |     |         |          |
| DUMP TRUCK   | 3.00     | DAY | 3,000   |          |
| ENGINEERING-STAKING                                | 1.00     | LS  | 5,000   |          |
| LOADER, LINE-OVER TRACK                            | 11.00    | DAY | 22,000  |          |
| WALKWAYS   | 1.00     | LS  | 3,000   |          |
| WATER TRUCK  | 7.00     | DAY | 7,000   |          |
| TOTAL OTHER ITEMS COST                             |          |     | 40,000  | 40,000   |
| PROJECT SUBTOTAL                                   |          |     |         | 659,338  |
| CONTINGENCIES                                      |          |     |         | 31,505   |
| GROSS PROJECT COST                                 |          |     |         | 690,843  |
| LESS COST PAID BY BNSF                             |          |     |         | 0        |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
ACTA

LOCATION - REDONDO JUNCT

DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

AUTO DOCK LEAD CROSSING.  
INSTALL 1-32 FT. CONCRETE PRIVATE ROAD CROSSING OVER THE  
AUTO DOCK LEAD. THIS IS A NEW CROSSING THAT WILL BE  
REQUIRED AT THE END OF THE CONSTRUCTION OF THE ALAMEDA  
CORRIDOR.

| DESCRIPTION  | QUANTITY | U/M | COST   | TOTAL \$ |
|--|----------|-----|--------|----------|
| *****  |          |     |        |          |
| LABOR  |          |     |        |          |
| *****  |          |     |        |          |
| ENGINEERING - GENERAL                              | 8.00     | MH  | 200    |          |
| ENGINEERING - REPLACE PRIVATE CROSSING             | 16.00    | MH  | 400    |          |
| PLACE FIELD WELDS                                  | 32.00    | MH  | 532    |          |
| PLACE PRIVATE CROSSING                             | 360.00   | MH  | 5,609  |          |
| SURFACE TRACK                                      | 40.00    | MH  | 663    |          |
| WORK TRAIN - PUBLIC XING                           | 48.00    | MH  | 958    |          |
| PAYROLL ASSOCIATED COSTS                           |          |     | 5,783  |          |
| EQUIPMENT EXPENSES                                 |          |     | 5,568  |          |
| SUPERVISION EXPENSES                               |          |     | 8,911  |          |
| PERDIEM EXPENSES                                   |          |     | 4,500  |          |
| TOTAL LABOR COST                                   |          |     | 33,124 | 33,124   |
| *****  |          |     |        |          |
| MATERIAL   |          |     |        |          |
| *****  |          |     |        |          |
| BALLAST, GENERIC                                   | 200.00   | NT  | 1,800  |          |
| SIGN, PRIVATE CROSSING, NO TRESPASSIN              | 2.00     | EA  | 27     |          |
| SPIKE, TIMBER SCREW, 5/8X12 IN, F/ROAD XING        | 48.00    | EA  | 45     |          |
| TIE, TRK, 10', PRE-PLATED, PANDROL, 6", ROUND HOLE | 38.00    | EA  | 2,556  |          |
| WELD, KIT FOR ALL RAIL WEIGHTS                     | 6.00     | KT  | 393    |          |
| CONC 136 08-SEC WITH FILLER FOR WOOD               | 32.00    | TF  | 4,320  |          |
| STORE EXPENSES                                     |          |     | 226    |          |
| ONLINE TRANSPORTATION                              |          |     | 1,927  |          |
| USE TAX  |          |     | 749    |          |
| OFFLINE TRANSPORTATION                             |          |     | 60     |          |
| TOTAL MATERIAL COST                                |          |     | 12,103 | 12,103   |
| *****  |          |     |        |          |
| OTHER  |          |     |        |          |
| *****  |          |     |        |          |
| CONTRACT ENGINEERING                               | 1.00     | LS  | 5,000  |          |
| EQUIPMENT RENTAL - LOADER TO INSTALL XING          | 4.00     | DAY | 8,000  |          |
| PAVE APPROACHES TO CROSSING                        | 1.00     | LS  | 15,000 |          |
| TOTAL OTHER ITEMS COST                             |          |     | 28,000 | 28,000   |
| PROJECT SUBTOTAL                                   |          |     |        | 73,227   |
| CONTINGENCIES                                      |          |     |        | 7,235    |
| GROSS PROJECT COST                                 |          |     |        | 80,462   |
| LESS COST PAID BY BNSF                             |          |     |        | 182      |
| TOTAL ESTIMATED COST                               |          |     |        | 80,280   |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART J DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

MID-CORRIDOR PORTION OF THE ALAMEDA CORRIDOR SIGNAL SYSTEM DESIGN, PLAN REVIEW, CHECK AND  
APPROVAL - BILLABLE TO THE A.C.T.A.

| DESCRIPTION                             | QUANTITY | U/M | COST   | TOTAL \$ |
|---|----------|-----|--------|----------|
| *****<br>LABOR<br>*****                 |          |     |        |          |
| TOTAL LABOR COST                        |          |     | 0      | 0        |
| *****<br>MATERIAL<br>*****              |          |     |        |          |
| TOTAL MATERIAL COST                     |          |     | 0      | 0        |
| *****<br>OTHER<br>*****                 |          |     |        |          |
| SIGNAL DESIGN, REVIEW, CHECK & APPROVAL | 1.00     | LS  | 60,000 |          |
| TOTAL OTHER ITEMS COST                  |          |     | 60,000 | 60,000   |
| PROJECT SUBTOTAL                        |          |     |        | 60,000   |
| CONTINGENCIES                           |          |     |        | 0        |
| GROSS PROJECT COST                      |          |     |        | 60,000   |
| LESS COST PAID BY BNSF                  |          |     |        | 0        |
| TOTAL BILLABLE COST                     |          |     |        | 60,000   |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART J DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

LOS ANGELES, CA.: TRACK AND SIGNAL CHANGES BETWEEN REDONDO JCT AND HOBART. FOR CONSTRUCTION OF 3RD TRACK AND METROLINK FLYOVER.

SOUTHERN CALIFORNIA DIV., SAN BERNARDINO SUBDIV., MP 143.2 - 144.5.

\*\*\*\*\*SIGNAL WORK ONLY\*\*\*\*\*

ESTIMATED INSULATED: (2) ON NMT, (2) ON SMT.

ESTIMATE UPDATED TO '98 FIGURES, AND REVISED PER NEW SURVEY RECIEVED 12/02/97.

(PHASE 2) THIS ESTIMATE IS FOR THE CODED TRACK PORTION OF PROJECT ONLY.

| DESCRIPTION                                  | QUANTITY | U/M | COST    | TOTAL \$ |
|--|----------|-----|---------|----------|
| *****  |          |     |         |          |
| LABOR  |          |     |         |          |
| *****  |          |     |         |          |
| PLACE SIGNALS                                | 104.00   | MH  | 2,600   |          |
| PLACE SIGNALS                                | 1680.00  | MH  | 33,715  |          |
| PAYROLL ASSOCIATED COSTS                     |          |     | 25,668  |          |
| EQUIPMENT EXPENSES                           |          |     | 11,483  |          |
| SUPERVISION EXPENSES                         |          |     | 39,547  |          |
| PERDIEM EXPENSES                             |          |     | 16,400  |          |
| TOTAL LABOR COST                             |          |     | 129,413 | 129,413  |
| *****  |          |     |         |          |
| MATERIAL                                     |          |     |         |          |
| *****  |          |     |         |          |
| CABLE UG 3 COND #6 AWG SOLID                 | 1000.00  | EA  | 2,250   |          |
| WIRE UG TRK #6 AWG DUPLEX                    | 1400.00  | EA  | 1,260   |          |
| RELAY A62-125 500-OHM-6FB                    | 19.00    | EA  | 13,152  |          |
| CABLE: 12 COND-NO. 14 U.G.                   | 1000.00  | FT  | 2,410   |          |
| CASE, 505:                                   | 2.00     | EA  | 4,723   |          |
| BATTERY, STORAGE - FOR MOTION EQUIP          | 4.00     | EA  | 7,884   |          |
| BATTERY, STORAGE - FOR TRACK                 | 4.00     | EA  | 3,560   |          |
| CIRCUIT TRK, ELECTROLOCK MODEL 4             | 1.00     | EA  | 6,556   |          |
| ELECTRICAL METER SERVICE MATERIAL            | 1.00     | EA  | 1,500   |          |
| ELECTROCODE INTERFACE, 2TK, HSE, RACK, MISC. | 2.00     | EA  | 111,144 |          |
| ELECTROLOCK 2TK HSE, RACK, MISC              | 1.00     | EA  | 37,042  |          |
| TRACK CIRCUIT RELAY, 4 OHM PLUG-IN           | 4.00     | EA  | 2,864   |          |
| TRACK CIRCUIT, AC/DC                         | 5.00     | EA  | 7,500   |          |
| TRACK CONNECTION KIT                         | 5.00     | EA  | 575     |          |
| WIRING PACKAGE                               | 5.00     | EA  | 2,300   |          |
| STORE EXPENSES                               |          |     | 5,058   |          |
| USE TAX                                      |          |     | 16,782  |          |
| OFFLINE TRANSPORTATION                       |          |     | 2,580   |          |
| TOTAL MATERIAL COST                          |          |     | 229,140 | 229,140  |
| *****  |          |     |         |          |
| OTHER  |          |     |         |          |
| *****  |          |     |         |          |
| COMMERCIAL POWER SERVICE                     | 1.00     | EA  | 10,000  |          |
| CONTRACT ENGINEERING - SIGNAL                | 1.00     | LS  | 25,000  |          |
| EQUIPMENT RENTAL - SIGNAL                    | 1.00     | LS  | 8,500   |          |
| TOTAL OTHER ITEMS COST                       |          |     | 43,500  | 43,500   |
| PROJECT SUBTOTAL                             |          |     |         | 402,053  |
| CONTINGENCIES                                |          |     |         | 40,205   |
| GROSS PROJECT COST                           |          |     |         | 442,258  |
| LESS COST PAID BY BNSF                       |          |     |         | 0        |
| TOTAL ESTIMATE) COST                         |          |     |         | 442,258  |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART J DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

HOBART, CA.: INSTALL CANTILEVER FLASHERS AND STUB GATES AT 26TH ST.  
SOUTH CALIFORNIA DIV., SAN BERNARDINO SUBDIV., L/S 7600, MP 144.5, DOT #N/A.

\*\*\*\*\*SIGNAL WORK ONLY\*\*\*\*\*  
ESTIMATE IS BEING REVISED TO REPLACE STYLE "C" CONTROLS WITH MOTION, AND ADD STUB GATES AT  
CROSSINGS ADJACENT TO UP TRACK.

| DESCRIPTION                          | QUANTITY | U/M | COST    | TOTAL \$ |
|--------------------------------------|----------|-----|---------|----------|
| *****                                |          |     |         |          |
| LABOR                                |          |     |         |          |
| *****                                |          |     |         |          |
| PLACE SIGNALS                        | 3920.00  | MH  | 78,669  |          |
| PAYROLL ASSOCIATED COSTS             |          |     | 55,603  |          |
| EQUIPMENT EXPENSES                   |          |     | 24,875  |          |
| SUPERVISION EXPENSES                 |          |     | 85,670  |          |
| TOTAL LABOR COST                     |          |     | 244,817 | 244,817  |
| *****                                |          |     |         |          |
| MATERIAL                             |          |     |         |          |
| *****                                |          |     |         |          |
| BELL, W/12" ADAPTER:                 | 6.00     | EA  | 1,870   |          |
| CABLE: 3 COND-NO. 6 U.G.             | 600.00   | FT  | 1,350   |          |
| CABLE: 7 COND-NO. 14 U.G.            | 2000.00  | FT  | 3,180   |          |
| CABLE: 7 COND NO 6 U.G.              | 2000.00  | FT  | 8,460   |          |
| FOUNDATION FOR CANT FLASHER - 1 MAST | 6.00     | EA  | 8,498   |          |
| CONDUIT, 4" PVC:                     | 150.00   | FT  | 272     |          |
| WIRE, TRACK NO. 6 TWISTED:           | 1600.00  | FT  | 1,440   |          |
| BATTERY, 212A+                       | 18.00    | EA  | 3,042   |          |
| BATTERY, 318A+                       | 18.00    | EA  | 4,248   |          |
| CANTILEVER/FLASHER 16'               | 6.00     | EA  | 36,300  |          |
| CASE, 411 W/40 AMP CONTROLLER        | 1.00     | EA  | 19,225  |          |
| ELECTRICAL METER MATERIAL            | 3.00     | EA  | 4,500   |          |
| MISC. FIELD MATERIAL                 | 1.00     | LS  | 1,500   |          |
| PMD3 R RACK SYSTEM                   | 1.00     | EA  | 38,230  |          |
| PMD3 R2 RACK SYSTEM                  | 1.00     | EA  | 47,725  |          |
| SHUNT, FSS-1                         | 6.00     | EA  | 3,930   |          |
| STUB GATE, 11'-18'                   | 4.00     | EA  | 65,480  |          |
| STORE EXPENSES                       |          |     | 6,157   |          |
| USE TAX                              |          |     | 20,433  |          |
| OFFLINE TRANSPORTATION               |          |     | 3,141   |          |
| TOTAL MATERIAL COST                  |          |     | 278,981 | 278,981  |
| *****                                |          |     |         |          |
| OTHER                                |          |     |         |          |
| *****                                |          |     |         |          |
| COMMERCIAL POWER SERVICE             | 3.00     | EA  | 4,500   |          |
| CONTRACT ENGINEERING-SIGNAL          | 1.00     | LS  | 10,000  |          |
| EQUIPMENT RENTAL                     | 1.00     | LS  | 19,600  |          |
| SURFACE ROCK                         | 1.00     | LS  | 600     |          |
| TOTAL OTHER ITEMS COST               |          |     | 34,700  | 34,700   |
| PROJECT SUBTOTAL                     |          |     |         | 558,498  |
| CONTINGENCIES                        |          |     |         | 55,849   |
| GROSS PROJECT COST                   |          |     |         | 614,347  |
| LESS COST PAID BY BNSF               |          |     |         | 0        |
| TOTAL ESTIMATED COST                 |          |     |         | 614,347  |



# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART J DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

LOS ANGELES, CA.: SIGNAL CHANGES BETWEEN REDONDO JCT. AND HOBART. FOR  
CONSTRUCTION OF 3RD MAIN TRACK AND METROLINK FLYOVER.  
SOUTHERN CALIFORNIA DIVISION, SAN BERNARDINO SUBDIVISION, L/S 7600, MP 143.2 - 144.5.  
THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING  
PURPOSES ONLY. THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND  
ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.  
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BN&SF  
RAILROAD.  
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER ESTIMATE IS SUBJECT TO CHANGE IN COST FOR  
LABOR, MATERIAL, AND OVERHEAD.

\*\*\*\*\*SIGNAL WORK ONLY\*\*\*\*\*

ESTIMATED INSULATED JOINTS REQUIRED:(150)

ESTIMATE IS BEING REVISED PER FIELD SURVEY REVISION DATED 08/12/98.

ESTIMATE SUPERCEDES PLAN ITEM #0000403598

ESTIMATE IS BEING REVISED TO RELOCATE SIGNAL BRIDGE AT CP 1445, REMOVE 1 SIGNAL FROM  
BRIDGE AND INSTALL AS A SEPERATE GROUND SIGNAL.

RELOCATE X-OVER BETWEEN MAIN #1 AND MAIN #2 AT CP 1444 AND MOVE TO CP 1445.

| DESCRIPTION                                   | QUANTITY | U/M | COST      | TOTAL \$  |
|---|----------|-----|-----------|-----------|
| *****   |          |     |           |           |
| LABOR   |          |     |           |           |
| *****   |          |     |           |           |
| COMMUNICATIONS LABOR                          | 196.00   | MH  | 3,920     |           |
| ELECTRICAL LABOR                              | 576.00   | MH  | 10,656    |           |
| PLACE SIGNALS                                 | 35168.00 | MH  | 705,772   |           |
| PAYROLL ASSOCIATED COSTS                      |          |     | 509,142   |           |
| EQUIPMENT EXPENSES                            |          |     | 227,774   |           |
| SUPERVISION EXPENSES                          |          |     | 784,458   |           |
| TOTAL LABOR COST                              |          |     | 2,241,722 | 2,241,722 |
| *****   |          |     |           |           |
| MATERIAL                                      |          |     |           |           |
| *****   |          |     |           |           |
| FOUNDATION, LEAVE-IN-PLACE BRIDGE             | 15.00    | EA  | 35,011    |           |
| CABLE: 12 COND-NO. 14 U.G.                    | 17600.00 | FT  | 42,416    |           |
| CABLE: 3 COND-NO. 6 U.G.                      | 5100.00  | FT  | 11,475    |           |
| CABLE: 7 COND NO 6 U.G.                       | 55100.00 | FT  | 233,073   |           |
| CABLE: 7 COND-NO. 9 U.G.                      | 15100.00 | FT  | 36,391    |           |
| WIRE, TRACK NO. 6 TWISTED:                    | 92000.00 | FT  | 82,800    |           |
| BATTERY, 212 AH                               | 12.00    | EA  | 2,028     |           |
| BATTERY, 318 AH                               | 24.00    | EA  | 5,664     |           |
| BRIDGE SIGNALS, 2 UNIT CL                     | 29.00    | EA  | 97,150    |           |
| BRIDGE, SIGNAL 5-TRK                          | 3.00     | EA  | 145,800   |           |
| CABLE, 6 PR. #19                              | 5500.00  | FT  | 4,400     |           |
| CANTILEVER SIGNAL, 2TK                        | 8.00     | EA  | 234,000   |           |
| CANTILEVER SIGNAL, 3TK                        | 1.00     | EA  | 36,500    |           |
| COMMUNICATION MATERIAL                        | 4.00     | EA  | 21,120    |           |
| EC INTERFACE HSE. 2TK                         | 2.00     | EA  | 95,200    |           |
| ELECTRICAL METER MATERIAL                     | 9.00     | EA  | 13,500    |           |
| GATE W/FLASHER, 21'-24'                       | 2.00     | EA  | 18,680    |           |
| GCP 3000 D2 RACK SYS. 2TK UNI                 | 2.00     | EA  | 127,744   |           |
| GCP 3000 SHELF UNIT                           | 1.00     | EA  | 11,700    |           |
| GROUND SIGNAL, 2 UNIT CL                      | 7.00     | EA  | 40,460    |           |
| MISC. SIGNAL MATERIAL                         | 1.00     | LS  | 15,000    |           |
| SHUNT, FSS-1                                  | 10.00    | EA  | 6,550     |           |
| SWITCH LOCK, 9B W/LAYOUT                      | 5.00     | EA  | 54,250    |           |
| TRACK CONNECTION KIT                          | 56.00    | EA  | 6,440     |           |
| VHLC, RACK HSE FOR 2 X-O(RADIO HSE)           | 2.00     | EA  | 340,696   |           |
| VHLC, RACK HSE FOR 3 X-O (RADIO HSE)          | 1.00     | EA  | 218,555   |           |
| VHLC, RACK HSE, FOR 1 T-O W/DR(REM HSE)       | 2.00     | EA  | 265,400   |           |
| VHLC, RACK HSE, FOR 1 XO/1 TO, & DR(REM HSE)  | 1.00     | EA  | 155,980   |           |
| VHLC, RACK HSE, FOR 2 XO/2 TO W/DR(RADIO HSE) | 1.00     | EA  | 316,650   |           |
| VHLC, RACK HSE, FOR 3 X-O/3 LOCKS(REM HSE)    | 1.00     | EA  | 201,789   |           |
| WIRING PACKAGE                                | 12.00    | EA  | 5,880     |           |
| STORE EXPENSES                                |          |     | 71,192    |           |
| USE TAX                                       |          |     | 236,279   |           |
| OFFLINE TRANSPORTATION                        |          |     | 36,318    |           |
| TOTAL MATERIAL COST                           |          |     | 3,226,091 | 3,226,091 |
| *****   |          |     |           |           |

\*\*\*\*\*

|                                 |       |    |         |
|---------------------------------|-------|----|---------|
| COMMERCIAL POWER SERVICE        | 9.00  | EA | 45,000  |
| CONTRACT ENGINEERING - SIGNAL   | 1.00  | LS | 316,000 |
| CONTRACT LABOR - CANT HOLES     | 15.00 | EA | 22,500  |
| CONTRACT LABOR - COMMUNICATIONS | 4.00  | EA | 25,000  |
| EQUIPMENT RENTAL - SIGNAL       | 1.00  | LS | 176,500 |
| NOC SOFTWARE CHANGES            | 4.00  | EA | 8,000   |

TOTAL OTHER ITEMS COST

593,000 593,000

PROJECT SUBTOTAL  
CONTINGENCIES

6,060,813  
606,081

GROSS PROJECT COST  
LESS COST PAID BY BNSF

6,666,894  
0

TOTAL ESTIMATED COST

6,666,894

ActaSig1

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
A.C.T.A.

LOCATION - REDONDO JUNCT TO HOBART

DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT NORTH END ALIGNMENT (EASTWARD EXPANSION) - ALAMEDA CORRIDOR FLYOVER CONNECTION  
AS FOLLOWS:

- \* CONSTRUCT 14,475 TF OF TRACK.
  - 12,850 TF - 136 LB. CWR-N
  - 1,925 TF - 136 LB. CWR-SH.
- \* CONSTRUCT 36 NEW SWITCHES.
  - 1 - #9 TURNOUT
  - 8 - #11 TURNOUTS
  - 2 - #11 CROSS-OVERS
  - 1 - #15 TURNOUT
  - 1 - #20 TURNOUT
  - 8 - #20 CROSS-OVERS
  - 1 - #24 TURNOUT
  - 2 - #24 CROSS-OVERS
- \* CONSTRUCT 5 - 136 LB. CROSSING FROGS (DIAMOND)
- \* LINE-OVER AND UPGRADE 4.415 TF WITH 136 LB. CWR-SH AND 60% TIE RENEWAL.
- \* LINE-OVER 13,749 TF OF EXISTING MAIN TRACK WITH 30% TIE RENEWAL.
- \* RETIRE 32 SWITCHES OF VARIOUS SIZES AND 7,200 TF OF TRACK OF VARIOUS WEIGHTS.
- \* RENEW 1 PRIVATE (UPS) CROSSING UNDER 3 TRACKS.
- \* RENEW 26TH STREET ROAD CROSSING UNDER 3 TRACKS.
- \* CONSTRUCT 7-136 LB. POWER DERAILS.

ESTIMATE DOES NOT INCLUDE ANY SIGNAL COSTS OR CIVIL WORKS.

FIELD INFORMATION PROVIDED BY LARRY LONG ON 4/16/98 WITH A PRELIMINARY DRAWING DATED 3/18/98.

\*\*\* REVISED FIELD NOTES 22 MAY 1998 BY LARRY LONG.

10 JUNE 1998, LARRY LONG ADDED \$75000 FOR MISCELLANEOUS GRADING.

| DESCRIPTION                                 | QUANTITY | U/M  | COST      | TOTAL \$  |
|---|----------|------|-----------|-----------|
| *****                                       |          |      |           |           |
| LABOR                                       |          |      |           |           |
| *****                                       |          |      |           |           |
| FLAGGING                                    | 8000.00  | MH   | 118,080   |           |
| PLACE CROSS TIES                            | 3701.00  | MH   | 57,780    |           |
| PLACE FIELD WELDS                           | 6560.00  | MH   | 110,908   |           |
| PLACE RAIL/OTM                              | 34961.00 | MH   | 545,811   |           |
| REMOVE CROSS TIES                           | 3164.00  | MH   | 49,396    |           |
| REMOVE RAIL/OTM                             | 3271.00  | MH   | 51,067    |           |
| REPLACE CROSS TIES                          | 11309.00 | MH   | 176,556   |           |
| REPLACE PRIVATE CROSSING                    | 542.00   | MH   | 8,462     |           |
| REPLACE PUBLIC CROSSING                     | 744.00   | MH   | 11,615    |           |
| REPLACE RAIL/OTM                            | 1948.00  | MH   | 30,412    |           |
| SURFACE TRACK                               | 5370.00  | MH   | 88,992    |           |
| UNLOAD BALLAST                              | 1790.00  | MH   | 29,664    |           |
| UNLOAD CROSS TIES                           | 354.00   | MH   | 5,417     |           |
| UNLOAD RAIL/OTM                             | 1438.00  | MH   | 22,005    |           |
| WORK TRAIN - BALLAST                        | 701.00   | MH   | 13,997    |           |
| WORK TRAIN - PICKUP RAIL/OTM                | 1617.00  | MH   | 32,286    |           |
| WORK TRAIN - PICKUP TIES                    | 221.00   | MH   | 4,413     |           |
| WORK TRAIN - PLACE CROSS TIES               | 1362.00  | MH   | 27,195    |           |
| WORK TRAIN - UNLOAD RAIL/OTM                | 2048.00  | MH   | 40,892    |           |
| PAYROLL ASSOCIATED COSTS                    |          |      | 1,007,152 |           |
| EQUIPMENT EXPENSES                          |          |      | 969,963   |           |
| SUPERVISION EXPENSES                        |          |      | 1,551,767 |           |
| PERDIEM EXPENSES                            |          |      | 751,501   |           |
|   |          |      |           |           |
| TOTAL LABOR COST                            |          |      | 5,705,331 | 5,705,331 |
| *****                                       |          |      |           |           |
| MATERIAL                                    |          |      |           |           |
| *****                                       |          |      |           |           |
| ANCHOR, RAIL, UNIT, 6 IN BASE, 132#/136#    | 58900.00 | EA   | 42,408    |           |
| BALLAST, GENERIC                            | 37020.00 | NT   | 333,180   |           |
| RAILROAD CROSSING DIAMOND                   | 5.00     | EA   | 425,000   |           |
| PLATE, TIE, 6 IN BASE, DS                   | 29980.00 | EA   | 142,405   |           |
| PLUG, RAIL, INSULATED, BONDED, 20 FT        | 70.00    | EA   | 38,430    |           |
| RAIL, 136 LB NEW WELDED :                   | 33640.00 | LF   | 457,840   |           |
| RAIL, 136 LB SH SC WELDED :                 | 7030.00  | LF R | 52,936    |           |
| SPIKE, TIMBER SCREW, 5/8X12 IN, F/ROAD XING | 360.00   | EA   | 338       |           |
| SPIKE, TIMBER SCREW, 5/8X12 IN, F/ROAD XING | 252.00   | EA   | 237       |           |

|  |          |     |            |           |
|--|----------|-----|------------|-----------|
| TRACK SPIKES, NEW                                  | 158000.0 | EA  | 36,340     |           |
| STD. SWITCH, 41, W/TRI_HND, TARGET, CONN_ROD       | 12.00    | EA  | 10,059     |           |
| SWITCH, PANELIZED 16.6 136 LB RH POWER SWITCH      | 7.00     | EA  | 117,873    |           |
| TIE, TRK, 10", PRE-PLATED, PANDROL, 6", ROUND HOLE | 360.00   | EA  | 24,210     |           |
| TIE, TRK, 10", PRE-PLATED, PANDROL, 6", ROUND HOLE | 220.00   | EA  | 14,795     |           |
| TIE, TRK, 10", PRE-PLATED, PANDROL, 6", ROUND HOLE | 172.00   | EA  | 11,567     |           |
| TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT       | 15138.00 | EA  | 445,360    |           |
| T.O., 136-09 LH MANUAL RBM FROG 16.6 PT:           | 1.00     | EA  | 46,127     |           |
| T.O., 136-11 LH MANUAL RBM FROG 19.6 PT:           | 2.00     | EA  | 105,678    |           |
| T.O., 136-11 LH POWER RBM FROG 19.6 PT:            | 8.00     | EA  | 439,600    |           |
| T.O., 136-11 RH MANUAL RBM FROG 19.6 PT:           | 2.00     | EA  | 105,678    |           |
| T.O., 136-15 RH POWER RBM FROG 30 PT :             | 1.00     | EA  | 73,260     |           |
| T.O., 136-20 LH POWER RBM FROG 30 PT:              | 9.00     | EA  | 773,820    |           |
| T.O., 136-20 RH POWER RBM FROG 30 PT:              | 8.00     | EA  | 687,840    |           |
| T.O., 136-24 LH POWER RBM FROG 39 PT :             | 5.00     | EA  | 493,230    |           |
| WELD, KIT FOR ALL RAIL WEIGHTS                     | 1510.00  | KT  | 98,905     |           |
| CONC 136 08-SEC WITH FILLER FOR WOOD               | 168.00   | TF  | 22,680     |           |
| CONC 136 08-SEC WITH FILLER FOR WOOD               | 240.00   | TF  | 32,400     |           |
| STORE EXPENSES                                     |          |     | 122,986    |           |
| ONLINE TRANSPORTATION                              |          |     | 388,865    |           |
| USE TAX  |          |     | 408,181    |           |
| OFFLINE TRANSPORTATION                             |          |     | 46,523     |           |
|  |          |     | -----      | -----     |
| TOTAL MATERIAL COST                                |          |     | 5,998,751  | 5,998,751 |
| *****  |          |     |            |           |
| OTHER  |          |     |            |           |
| *****  |          |     |            |           |
| DUMP FEES  | 1.00     | LS  | 92,000     |           |
| DUMP TRUCK   | 218.00   | DAY | 218,000    |           |
| INSPECTORS   | 3.00     | EA  | 1,060,000  |           |
| LINEOVER TRACK                                     | 18164.00 | TF  | 272,460    |           |
| LOADER   | 218.00   | DAY | 436,000    |           |
| MISCELLANEOUS ENGINEERING & CLOSEOUTS              | 1.00     | LS  | 500,000    |           |
| MISCELLANEOUS GRADING                              | 1.00     | LS  | 75,000     |           |
| MRT GRADER   | 218.00   | DAY | 436,000    |           |
| OFFICE SPACE (CONSTRUCTION TRAILER)                | 1.00     | LS  | 160,000    |           |
| ON SITE AUDITOR                                    | 1.00     | LS  | 500,000    |           |
| PAVING, STRIPING & DETOURS                         | 1.00     | LS  | 200,000    |           |
| SECURITY COST                                      | 1.00     | LS  | 40,000     |           |
| WALKWAYS   | 1.00     | LS  | 100,000    |           |
| WATER TRUCK  | 176.00   | DAY | 176,000    |           |
|  |          |     | -----      | -----     |
| TOTAL OTHER ITEMS COST                             |          |     | 4,265,460  | 4,265,460 |
|  |          |     | -----      | -----     |
| SUBTOTAL   |          |     | 15,969,542 |           |
| LESS CREDIT FOR SALVAGED MATERIAL                  |          |     | -12,000    |           |
|  |          |     | -----      | -----     |
| PROJECT SUBTOTAL                                   |          |     | 15,957,542 |           |
| CONTINGENCIES                                      |          |     | 1,471,529  |           |
|  |          |     | -----      | -----     |
| GROSS PROJECT COST                                 |          |     | 17,429,071 |           |
| LESS COST PAID BY BNSF                             |          |     | 0          |           |
|  |          |     | -----      | -----     |
| TOTAL ESTIMATED COST                               |          |     | 17,429,071 |           |

# EXHIBIT "B"

THE B. N. S. F. RAILWAY COMPANY  
OUTSIDE PARTY ESTIMATE FOR  
ACTA

LOCATION - MALABAR

DETAILS OF ESTIMATE

## PURPOSE, JUSTIFICATION AND DESCRIPTION

### SLAUSON CUTOVERS

AS ACTA CONSTRUCTS THE ALAMEDA CORRIDOR , 2 CUTOVERS WILL  
BE REQUIRED. ONE CUTOVER TO THE SHOOFLY AND ONE BACK TO THE  
FINAL ALIGNMENT OF THE HARBOR SUBDIVISION AT SLAUSON AVE,

| DESCRIPTION                              | QUANTITY | U/M | COST    | TOTAL \$ |
|--|----------|-----|---------|----------|
| *****                                    |          |     |         |          |
| LABOR                                    |          |     |         |          |
| *****                                    |          |     |         |          |
| ENGINEERING - GENERAL                    | 16.00    | MH  | 400     |          |
| ENGINEERING - PLACE RAIL/OTM             | 32.00    | MH  | 800     |          |
| FLAGGING                                 | 1800.00  | MH  | 26,568  |          |
| PLACE FIELD WELDS                        | 192.00   | MH  | 3,193   |          |
| REPLACE RAIL/OTM                         | 1200.00  | MH  | 18,698  |          |
| SURFACE TRACK                            | 320.00   | MH  | 5,303   |          |
| WORK TRAIN - PICKUP RAIL/OTM             | 48.00    | MH  | 958     |          |
| PAYROLL ASSOCIATED COSTS                 |          |     | 39,524  |          |
| EQUIPMENT EXPENSES                       |          |     | 38,065  |          |
| SUPERVISION EXPENSES                     |          |     | 60,898  |          |
| PERDIEM EXPENSES                         |          |     | 17,100  |          |
|  |          |     |         |          |
| TOTAL LABOR COST                         |          |     | 211,507 | 211,507  |
| *****                                    |          |     |         |          |
| MATERIAL                                 |          |     |         |          |
| *****                                    |          |     |         |          |
| WELD, KIT FOR ALL RAIL WEIGHTS           | 24.00    | KT  | 1,572   |          |
| STORE EXPENSES                           |          |     | 39      |          |
| USE TAX                                  |          |     | 129     |          |
| OFFLINE TRANSPORTATION                   |          |     | 20      |          |
|  |          |     |         |          |
| TOTAL MATERIAL COST                      |          |     | 1,760   | 1,760    |
| *****                                    |          |     |         |          |
| OTHER                                    |          |     |         |          |
| *****                                    |          |     |         |          |
| EQUIPMENT RENTAL-LOADER TO REALIGN TRACK | 20.00    | DAY | 40,000  |          |
|  |          |     |         |          |
| TOTAL OTHER ITEMS COST                   |          |     | 40,000  | 40,000   |
|  |          |     |         |          |
| PROJECT SUBTOTAL                         |          |     |         | 253,267  |
| CONTINGENCIES                            |          |     |         | 1,286    |
|  |          |     |         |          |
| GROSS PROJECT COST                       |          |     |         | 254,553  |
| LESS COST PAID BY BNSF                   |          |     |         | 0        |
|  |          |     |         |          |
| TOTAL ESTIMATED COST                     |          |     |         | 254,553  |

**EXHIBIT "C"**  
**CONTRACTOR REQUIREMENTS**  
**CALIFORNIA**

**1.01 General**

- **1.01.01** The Contractor shall cooperate with **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of, \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- **1.01.02** The Contractor shall execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto.
- **1.01.03** The Contractor shall plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations.
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental, health and safety. The Contractor shall be responsible for and indemnify and save Railway harmless from all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor shall notify the **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, hereinafter referred to as "ACTA", at \_\_\_\_\_ and Railway's Construction Engineer, telephone number **(213) 267 4184** a reasonable time (depending upon flagging requirements) in advance of initially commencing work on the BNSF Property, and also shall provide reasonable notice in advance of commencing or terminating any subsequent work on the BNSF Property. Contractors notification to Railway, shall refer to Railroad's file 01000079.
- **1.01.07** For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor shall furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing shall include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations shall take into consideration railway surcharge loading and shall be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations shall be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor shall not begin work until notified by the Railway that plans have been approved. The Contractor shall be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case shall the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor shall have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## 1.02 Agreement

- 1.02.01 No employee of the Contractor, its subcontractors, agents or invitees shall enter Railway Property without first having attended a BNSF Contractor Safety Orientation session. The Contractor shall ensure that at a minimum its on-site Project Supervisor(s) have attended a Safety Orientation conducted by the Railway, or its Representative, and that each of its employees, subcontractors, agents or invitees have received the same Safety Orientation through sessions conducted by or through the Contractor before any work is performed on the Project. The Contractor shall give Railway a minimum of thirty (30) days' advance notice for scheduling the Safety Orientation.

## 1.03 Railway Requirements

- 1.03.01 The Contractor shall take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement shall be paid for by ACTA.
- 1.03.02 The Contractor shall notify the Railway's Division Superintendent Steve B. Smith at (909)386 4001 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- 1.03.03 The Contractor shall abide by the following clearances during construction:
  - ◆ 25'-0" Horizontally from centerline of nearest track.
  - ◆ 22'-6" Vertically above top of rail (Temporary Falsework Clearance may be reduced to 21'-6" Subject to Railway and Public Utilities Commission approval)
  - ◆ 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - ◆ 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - ◆ 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - ◆ 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- 1.03.04 Any infringement within State statutory clearances due to the Contractor's operations shall be submitted to the Railway and to ACTA and shall not be undertaken until approved in writing by the Railway, and until ACTA has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- 1.03.05 In the case of impaired vertical clearance above top of rail, Railway shall have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices shall be borne by ACTA.
- 1.03.06 The details of construction affecting the Railway's Property and tracks not included in the contract plans shall be submitted to the Railway by ACTA for approval before work is undertaken and this work shall not be undertaken until approved by the Railway.
- 1.03.07 At other than public road crossings, the Contractor shall not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor shall obtain a "Temporary Private Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railway's tracks. The temporary crossing shall be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor shall be at the expense of the Contractor.

- **1.03.08** Discharge, release or spill on the Railway Property of any hazardous substances in excess of a reportable quantity or any hazardous waste is prohibited and Contractor shall immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills. Contractor shall not allow Railway Property to become a treatment, storage facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.09** The Contractor upon completion of the work covered by this contract, shall promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and shall cause Railway's Property to be left in a condition acceptable to the Railway's representative.

#### **1.04 Contractor Safety Action Plan**

- **1.04.01** Each Contractor shall develop and implement a Safety Action Plan which shall be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor shall audit its compliance with the Safety Action Plan. The Contractor shall designate an on-site Project Supervisor who shall serve as the contact person for the Railway and who shall maintain a copy of the Safety Action Plan and subsequent audits at the job site for inspection and review by the Railway at any time during the course of the project. The Safety Action Plan shall contain, but not be limited to the following;

- ◆ **Contractors Employee Safety**
  - ◆ Safety Orientation (Sec 1.02.01)
  - ◆ Job Briefings (Sec 1.06.01 & 1.06.02)
  - ◆ Personal Protective Equipment (Sec 1.06.08)
  - ◆ Protection of Railway Facilities and Railway Flagger Services (Sec 1.03.05 & 1.05)
  - ◆ Protection of Contract Employees working nearer than 25 feet from any track (Sec 1.06.03)
  - ◆ Work After Hours (Sec 1.06.04)
- ◆ **Contractor Employee Training**
  - ◆ Personal Injury Reporting (Sec 1.09)
  - ◆ Accident Investigation and Analysis
- ◆ **High Risk Work Areas/Situations**
  - ◆ Notification of Damage to Railway property or hazards that could effect the safe operation of trains (Sec 1.06.06)
  - ◆ Falsework/Shoring affecting the integrity of tracks (Sec 1.01.06)
  - ◆ Clearances affecting the integrity of train operations (Sec 1.03.03)
  - ◆ Moving Equipment and Materials across Railway's tracks (Sec 1.03.07)
  - ◆ Security of Machines, Equipment and Vehicles (Sec 1.06.10)
  - ◆ Power line Safety (Sec 1.06.12)
  - ◆ Excavation Safety (Sec 1.07)
- ◆ **High Risk Employees**
  - ◆ Alcohol and Drug Use (Sec 1.06.05)
  - ◆ Firearms or Deadly Weapons (Sec 1.06.07)
- ◆ **Property Damage, Housekeeping and Clean-up (Sec 1.03.01 & 1.03.09)**
  - ◆ Storage of Materials (Sec 1.06.09)
  - ◆ Facility Auditing
- ◆ **Compliance with Laws (Sec 1.01.04)**
- ◆ **Hazardous Substances and Materials**
  - ◆ Discharges, Releases and Spills (Sec 1.03.08)
  - ◆ Hazardous Materials encountered in excavations (Sec 1.08)



## **1.05 Protection of Railway Facilities and Railway Flagger Services:**

- **1.05.01** The Contractor shall notify BNSF's Construction Roadmaster a reasonable time (depending upon flagging requirements) in advance of initially commencing work on the BNSF Property, and also shall provide reasonable notice in advance of commencing or terminating any subsequent work on the BNSF Property, in order that BNSF may arrange for a BNSF flagman, pursuant to the requirements of this Exhibit "C", to protect BNSF from damage to its trains and property. BNSF's Construction Roadmaster telephone number is: ( ) \_\_\_\_\_.
- **1.05.02** Railway flagger and protective services and devices will be required and furnished when Contractors work activities are located over or under of and within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track centerline that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - ◆ **1.05.02a** When in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
  - ◆ **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - ◆ **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - ◆ **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  - ◆ **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
  - ◆ **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
  - ◆ **1.05.03b** Each time a flagger is called, the minimum period for billing shall be the eight (8) hour basic day.
  - ◆ **1.05.03c** The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by ACTA.

## **1.06 Contractor General Safety Requirements**

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track shall be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing shall be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers shall not work nearer than 25 feet to the centerline of any track without proper flag/work protection provided by the Railway, unless the track is protected by track bulletin and work has been authorized by the Railway. If flag/work protection is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the flag/work protection, (3) the method of communication to stop and resume work, and (4) entry into flag/work limits when designated. Men or equipment entering

flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing if working at less than 25 feet from center line of track.

- 1.06.04 When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees shall be present at all times.
- 1.06.05 Any Contractor employee, its subcontractors employee, agents or invitees under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- 1.06.06 Any damage to Railway Property, or if any hazard is noticed on passing trains, shall be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with a track, signal equipment, or structure (bridge) could result in a train derailment and shall be reported by the quickest means possible to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and shall be posted at the job site.
- 1.06.07 All persons are prohibited from having pocket knife with blade in excess of three (3) inches, firearms or other deadly weapons in their possession while working on Railway's Property.
- 1.06.08 All personnel protective equipment used on Railway Property shall meet applicable OSHA and ANSI specifications. Railway personnel protective equipment requirements are; a) safety glasses: permanently affixed side shields; no yellow lenses, b) hard hats with high visibility orange cover, c) safety shoes: hardened toe, above-the-ankle lace-up with a defined heel and d), high visibility retro-reflective orange vests are required as specified by the Railroad's representative in charge of the project. Hearing protection, fall protection and respirators will be worn as required by State and Federal regulations.
- 1.06.09 The Contractor shall not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest Railway track. At highway/rail at-grade crossings materials, machinery or equipment shall not be stored or left temporarily which interferes with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor, will establish a storage area with concurrence of the Railroad's representative.
- 1.06.10 Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement.
- 1.06.11 Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water shall meet all Federal, State and Local regulations.
- 1.06.12 All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load shall be; 200 KV or below - 15 feet, 200 to 350 KV - 20 feet, 350 to 500 KV - 25 feet, 500 to 750 KV - 35 feet, 750 to 1000 KV - 45 feet and if capacity of the line is not known, minimum clearance of 45 feet must be maintained. A person shall be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

## **1.07 Excavation**

- 1.07.01 Before excavating, it must be ascertained by the Contractor if there are any underground pipe lines, electric wires, or cables, including fiber optic cable systems that either cross or run parallel with the track which are located within the Projects work area. Excavating on Railway's Property could result in damage to buried cables resulting in delay to Railway traffic, including disruption of service to users resulting in business interruptions involving loss of revenue and profits. Before any excavation commences, the Contractor must contact the Railway's Signal Supervisor

and Roadmaster. All underground and overhead wires must be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is also the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

- **1.07.02** The Contractor must cease all work and the Railway must be notified immediately before continuing excavation in the area if obstructions are encountered that do not appear on drawings. If the obstruction is a utility, and the owner of the utility can be identified, then the owner should also be notified immediately. If there is any doubt about the location of underground cables or lines of any kind, no work will be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations shall be conducted in compliance with applicable OSHA regulations and regardless of depth shall be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

## **1.08 Hazardous Waste, Substances and Material Reporting**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor shall immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

## **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Representative no later than the close of shift on the date of the injury.

**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather \_\_\_\_\_  
(if non-BNSF location)
5. Social Security # \_\_\_\_\_
6. Name (last, first, mi) \_\_\_\_\_
7. Address: Street: \_\_\_\_\_ City: \_\_\_\_\_ St \_\_\_\_\_ Zip: \_\_\_\_\_
8. Date of Birth: \_\_\_\_\_ and/or Age \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)
9. (a) Injury: \_\_\_\_\_ (b) Body Part: \_\_\_\_\_  
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. Treatment:  
☐ First Aid Only  
☐ Required Medical Treatment  
☐ Other Medical Treatment
13. Dr. Name \_\_\_\_\_ 30. Date: \_\_\_\_\_
14. Dr. Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St \_\_\_\_\_ Zip: \_\_\_\_\_
15. Hospital Name: \_\_\_\_\_
16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St \_\_\_\_\_ Zip: \_\_\_\_\_
17. Diagnosis: \_\_\_\_\_

**FAX TO  
RAILWAY AT (817) 352-7595  
AND COPY TO  
RAILWAY DIVISION ENGINEER FAX 909 386 4070**

## EXHIBIT "C-1"

Agreement  
Between  
**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**  
and the  
**CONTRACTOR**

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

740 E. Carnegie Drive

San Bernardino, CA. 92408-3571

Attention: Assistant Director Public Projects

Railway File: 01000079

Agency Project: \_\_\_\_\_

Gentlemen:

The undersigned, hereinafter referred to as Contractor, has entered into a Contract dated \_\_\_\_\_, 19\_\_\_\_, with the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, hereinafter referred to as "ACTA", for the performance of certain work in connection with the project.

\_\_\_\_\_ in the performance of which work the Contractor will necessarily be required to conduct operations within THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Railway"), right of way and property ("Railway Property"). The Contract provides that no work shall be commenced within Railway Property until the Contractor employed in connection with said work for ACTA shall have executed and delivered to Railway an Agreement, in the form hereof, and shall have provided insurance of the coverage and limits specified in said Contract and Section 2 of this Agreement. If this Agreement is executed by other than the Owner, General Partner, President or Vice President of Contractor, evidence is furnished to you herewith certifying that the signatory is empowered to execute this Agreement for the Contractor.

Accordingly, as one of the inducements to and as part of the consideration for Railway granting permission to Contractor to enter upon Railway Property, Contractor, effective on the date of said Contract, has agreed and does hereby agree with Railway as follows:

### **Section 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor agrees to release Railway from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against Railway, regardless of the negligence of Railway, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of Railway.

Contractor shall indemnify and hold harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder. **THE LIABILITY ASSUMED BY CONTRACTOR SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE SOLE NEGLIGENCE OR SOLE WILFUL MISCONDUCT OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it shall adjust and settle all claims made against Railway, and shall, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway shall give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

**Section 2.** The Contractor will observe and comply with all the provisions, obligations and limitations to be observed by Contractor which are contained in the subdivision of the specifications of said Contract, entitled EXHIBIT "C", CONTRACTOR REQUIREMENTS, and shall include, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

**Section 3:** Contractor shall be responsible to Railway, including its affiliated railway companies, and its tenants for all damages for any unscheduled delay to a freight or passenger train that affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment and train service employees contractual loss of incentive pay and bonuses, and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing Railway Work. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use, Contractor will be billed per freight train hour at an average rate of (\$385.33 in 1997) with annual adjustments per hour per train as determined from Railway's record. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

In addition to the above damages, passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer. Under these arrangements, if Railway does not meet its contract service commitment, Railway may suffer loss of performance or incentive pay or be subject to a penalty payment. Contractor shall be responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor, or subcontractors.

As example, a train arrives 30 minutes after its contract service commitments and Railway is assessed damages per terms of the contract. Either Contractor, and/or subcontractors, caused a 29 minute delay to the train and therefore are not responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway.

As example, a train arrives 30 minutes after its contract service commitments and Railway is assessed damages per terms of the contract. Either Contractor, and/or subcontractors, caused a 31 minute delay to the train

and therefore are 100% responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the maximum extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains could be as high as \$50,000.00 per incident.

Contractor and subcontractors shall plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the undersigned two original copies of this letter, which, upon execution by Railway, shall constitute an Agreement between us.

Yours truly,

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City,

\_\_\_\_\_  
State,

\_\_\_\_\_  
Zip

**The Burlington Northern and Santa Fe  
Railway Company**

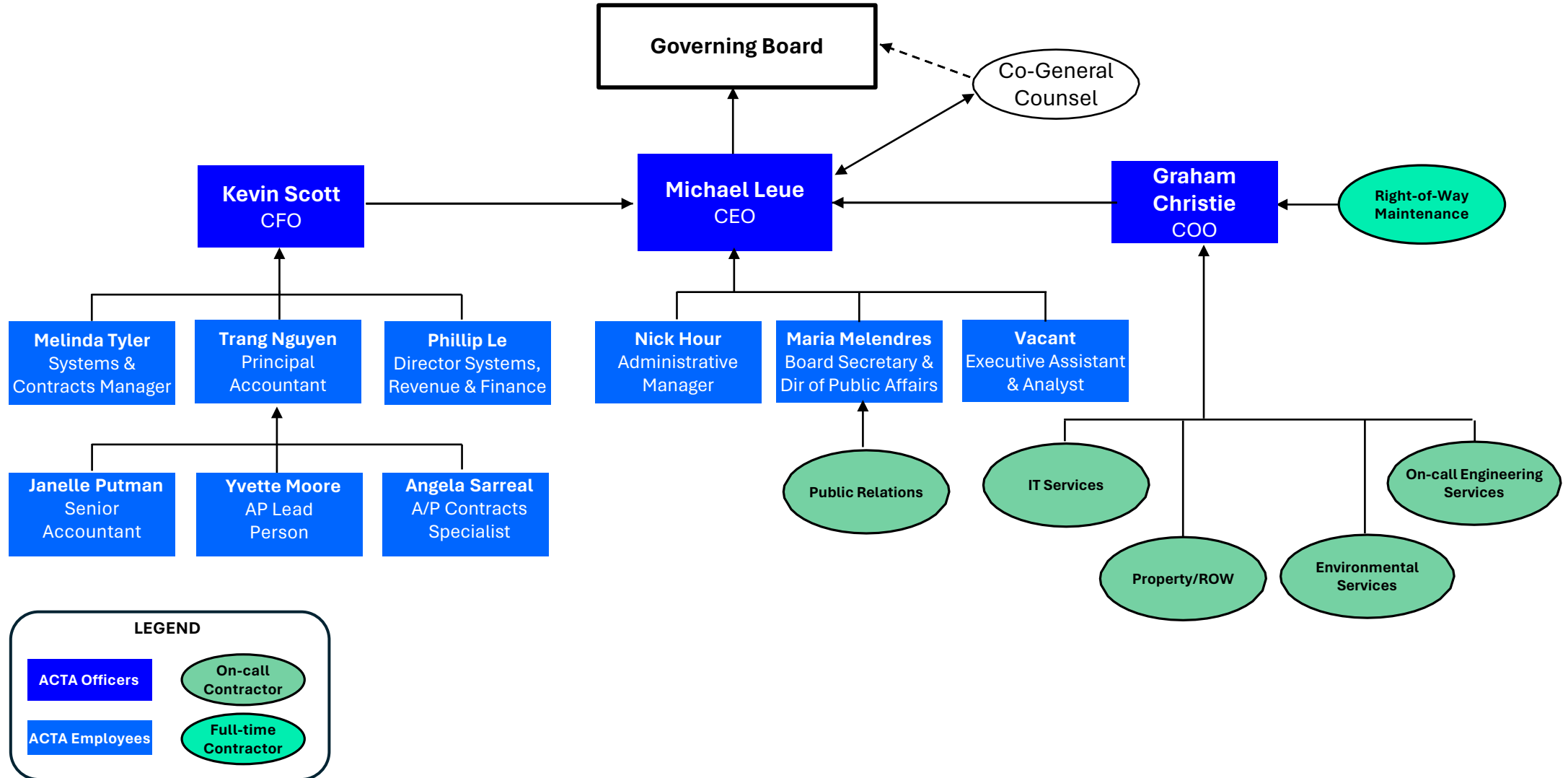
By \_\_\_\_\_  
Vice President and Chief Engineer

Accepted this \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_

## Transmittal 5

### ACTA Organization Chart





## Transmittal 6

### Insurance Program Schematic

# Alameda Corridor Transportation Authority

2024 - 2025 Insurance Program Schematic: Updated 04/25/2024

LEGEND

Deductible

