Alameda Corridor Transportation Authority Proposed Settlement with Railroads

UNDERLYING AGREEMENTS

ACTA and both Ports entered into two agreements with the Railroads in 1998 to provide for the financing, construction, maintenance, and operation of the Corridor. The first was the Amended and Restated Construction and Maintenance Agreement, which outlined the project definition and construction sequencing terms. The second was the Use and Operating Agreement (UOA) which set forth (1) the revenue collection terms and conditions to retire the debt and reimburse the Ports for other allowable expenses, and (2) the operations and maintenance terms for the Corridor.

Under the UOA, ACTA collects Use Fees and Container Charges from the Railroads. These collections are used to pay debt service on approximately $1.9 billion in revenue bonds issued by ACTA, as well as to reimburse the Ports $200 million of property assembly costs and about $50 million in tax-exempt bond benefit.

Administrative costs and certain other costs, including port obligations are also paid from revenue collections. Nearly $5 billion in debt service payments in total are required through 2037 to retire the bonds alone. ACTA's debt is structured in such a way that annual debt service payments gradually increase from about $80 million per year today to $200 million per year over the term of the bonds.

Under the UOA, the Ports are obligated to loan ACTA funds in the event that revenue collections do not cover debt service payments and certain related expenses. In the event of a shortfall, each port is obligated to pay up to 20% of the annual debt service amount and related expenses each year. Therefore, collections under the UOA are critical to meet debt service, recover other allowable costs and avoid loans, which may never get repaid if the fees terminate in 2037 as provided in the existing documents (i.e., before the amendments proposed in this settlement).

Use Fees are collected from the Railroads on loaded and empty containers as well as other types of railcars that travel on the Corridor. In addition, Container Charges are collected from the Railroads on loaded containers that arrive or leave by ship that do not travel on the Corridor, but are trucked around the Corridor to or from rail loading facilities provided that those containers leave or arrive from outside the Southern California area. About 70% of ACTA's revenue collections come from Use Fees and 30% come from Container Charges. The Railroads generally pass these fees onto their customers.

THE DISPUTE

In early 2003, after the first several months of operations and revenue collections, ACTA became aware that it was collecting revenue on a smaller than expected percentage of the total port throughput, 31% instead of approximately 50%. It commissioned a consultant study, which determined that an industry practice known as transloading had taken hold in the years following the execution of the 1998 UOA. Containers that formerly would have left the Southern California area by rail in their original containers were increasingly being trucked to distribution centers for consolidation in larger containers before leaving the area. For every three twenty-foot equivalent units (TEU) that leave the Southern California area by rail, two leave in their original containers (known as "intact") and one leaves after being transloaded.

Transloading has diminished ACTA revenues. ACTA determined that this practice was responsible for most of the reduction in the share of port cargo paying ACTA fees. Assuming the current ratio of intact to transloaded cargo holds, ACTA would lose $1.5 billion in revenue over the next twenty-two years, if the matter were not resolved.

In September 2003, ACTA presented its findings to both Railroads and advised that it was ACTA's position that transloaded cargo was eligible for Container Charges and that ACTA would begin invoicing for this cargo. The Railroads disputed this position. They contended that once the cargo was unloaded, the new container was not subject to a charge. The ACTA invoices were not paid.

In November 2004, joint sessions began with both Railroads. Over the next fifteen months, various proposals, counterproposals and legal positions were exchanged without progress. In June 2005, ACTA issued a demand for arbitration and extended an offer for formal mediation proceedings, which was eventually accepted by the Railroads. In May 2006, the mediation was conducted and the terms of a settlement were agreed to pending approval of the ACTA Governing Board, the Port Harbor Commissions and their respective City Councils. The terms of the settlement were approved by the ACTA Board. The Port Harbor Commissions and City Councils are now being requested to grant approval.

THE SETTLEMENT PROPOSAL AND ITS BENEFITS

There are four key financial provisions in the settlement that provide added revenue to offset the impact of transloading:

> ***Permanent Fee Increase***: The Railroads agree to an immediate $0.90 per TEU permanent increase in the Use Fee and the Container Charge for loaded containers arriving or leaving by ship, effective 60 days following final City Council approval.

Annual CPI Adjustment: The ceiling for the annual CPI fee/charge adjustment as defined in the UOA is increased from 3% to 4.5%. The revised annual CPI adjustment ceiling also applies to the permanent and temporary increases that are described herein.

Additional Contingent Temporary Fee Increase: In addition to the permanent fee increase, the Railroads agree to a fee increase of $1.00 per TEU in the Use Fee and Container Charge for loaded containers arriving or leaving by ship, which would be contingent upon the occurrence of an actual loan (Shortfall Advance) by the Ports required by the UOA, and which would be payable thereafter until the Ports are fully reimbursed consistent with the UOA for such Shortfall Advances plus interest at the T-bill interest rate.

Extension of Term: The 35-year term during which the Railroads are required to pay Use Fees and Container Charges would be extended by 25 years from 2037 to 2062, unless all Corridor expenses are paid sooner.

In return for these four key provisions, ACTA will agree to release and waive any and all claims against the Railroads related to the transloading dispute

APPROVAL PROCESS

Approval of the settlement by both Harbor Boards and both City Councils is recommended based on advice of counsel regarding the uncertainty as to the outcome of litigation to validate ACTA's rights to collect fees on transloaded cargo.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH RATIFYING, CONFIRMING AND APPROVING ORDINANCE NO. HD-_____ OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH, WHICH APPROVES AND AUTHORIZES THE EXECUTION AND DELIVERY BY THE EXECUTIVE DIRECTOR OF THE FIRST AMENDMENT TO THE ALAMEDA CORRIDOR USE AND OPERATING AGREEMENT, AND MAKING A DETERMINATION RELATING THERETO

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

WHEREAS, the Board of Harbor Commissioners of the City of Long Beach has adopted Ordinance No. HD-_____ on the _____ day of _____, 2006, a complete copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, Ordinance No. HD-_____ of the Board of Harbor Commissioners of the City of Long Beach approves and authorizes the execution and delivery by the Board of Harbor Commissioners of the First Amendment to the Alameda Corridor Use and Operating Agreement attached as Exhibit "A" and making a determination relating thereto; and

WHEREAS, this City Council concurs in the findings of, and wishes to ratify, confirm and approve the actions taken by, the Board of Harbor Commissioners of Ordinance No. HD-_____; and

WHEREAS, the Director of Planning and Environmental Services for the Harbor Department has determined a review of the applicability of the California Environmental Quality Act (CEQA) to this proposed amendment to the

Alameda Corridor Use and Operating Agreement that it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and that under the provisions of the State Guidelines implementing CEQA, the adoption of this resolution is not subject to the requirements of CEQA.

NOW, THEREFORE, the City Council of the City of Long Beach hereby finds and ordains as follows:

Section 1. The City Council hereby finds and determines that the First Amendment to the Alameda Corridor Use and Operating Agreement will not result in a direct or reasonably foreseeable indirect physical change in the environment and that this ordinance is not subject to the provisions of the California Environmental Quality Act.

Sec. 2. The City Council of the City of Long Beach hereby concurs in the findings of, and ratifies, confirms and approves the actions taken by, the Board of Harbor Commissioners of the City of Long Beach in Ordinance No. HD-_____.

Sec. 3. The City Clerk shall certify to the passage of this ordinance by the City Council and shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach. This ordinance shall take effect on the 31st day after its approval by the Mayor of the City of Long Beach.

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Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2006 by the following vote:

Ayes: Councilmembers: _____

_____

_____

_____

Noes: Councilmembers: _____

_____

Absent: Councilmembers: _____

_____

_____

City Clerk

Approved: _____ _____
(Date) Mayor

CMG:arh 7/28/06 #06-03721
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ORDINANCE NO. HD-

AN ORDINANCE OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO ALAMEDA CORRIDOR USE AND OPERATING AGREEMENT, AND MAKING A DETERMINATION RELATING THERETO

WHEREAS, pursuant to the provisions of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, as amended (the "Joint Powers Act"), the City of Los Angeles and the City of Long Beach (together, the "Members") entered into the certain Joint Exercise of Powers Agreement dated August 31, 1989, which has been amended and restated by that certain Amended and Restated Joint Exercise of Powers Agreement dated as of December 18, 1996 (as so amended and restated, and as it may further be amended or supplemented from time to time, the "Agreement"), creating the Alameda Corridor Transportation Authority (previously known as the Consolidated Transportation Corridor Joint Powers Authority) (the "Authority"), a public entity separate and apart from the Members; and

WHEREAS, the Authority has been formed for the purpose of planning, financing, constructing and administering the operation of a rail line of approximately 20 miles from the Ports of Los Angeles and Long Beach to rail facilities near downtown Los Angeles, including certain highway improvements (the "Project"); and

WHEREAS, the Board of Harbor Commissioners of the City of Long Beach (the "Board"), together with the Board of Harbor Commissioners of the City of Los Angeles, has acquired certain railroad rights of way and adjoining land and improvements in connection with the project pursuant to separate agreements with Southern Pacific Transportation Company ("Southern Pacific"), with Union Pacific

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Railroad Company ("Union Pacific"), and with The Atchison, Topeka and Santa Fe Railway Company ("Atchison Topeka"); and

WHEREAS, Southern Pacific and Union Pacific have merged, with Union Pacific as the surviving corporation; and

WHEREAS, BNSF Railway Company is the successor by merger to Atchison Topeka; and

WHEREAS, the Board wishes to enter into the First Amendment to Alameda Corridor Use and Operating Agreement with the City of Los Angeles acting by and through its Board of Harbor Commissioners, The Authority, Union Pacific, and BNSF Railway Company, in connection with the operation of the Project, substantially in the form attached hereto as Exhibit "A"; and

WHEREAS, the Director of Planning and Environmental Services has determined in a review of the applicability of the California Environmental Quality Act (CEQA) to this proposed amendment to the Alameda Corridor Use and Operating Agreement that it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and that under the provisions of the State Guidelines implementing CEQA, the adoption of this resolution is not subject to the requirements of CEQA.

NOW, THEREFORE, the Board of Harbor Commissioners of the City of Long Beach hereby finds and ordains as follows:

Section 1. The Board hereby finds and determines that the First Amendment to the Alameda Corridor Use and Operating Agreement will not result in a direct or reasonably foreseeable indirect physical change in the environment and that this ordinance is not subject to the provisions of the California Environmental Quality Act.

Section 2. The proposed form of the First Amendment to the Use and Operating Agreement attached hereto as Exhibit "A" is hereby authorized and approved.

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Telephone (562) 570-2200

Section 3. The Executive Director of the Harbor Department of the City of Long Beach or his designee, and each of them acting individually, are hereby authorized and empowered, for and in the name of and on behalf of the Board, to execute and deliver the First Amendment to the Use and Operating Agreement, substantially in the form attached hereto as Exhibit "A", with such changes thereto as the Executive Director or the designee executing and delivering such First Amendment to Alameda Corridor Use and Operating Agreement may require or approve; such requirement or approval to be conclusively evidenced by the execution and delivery thereof; and to execute and deliver any additional documents, certificates or instruments related thereto, and to take such other actions as may be deemed necessary or advisable in order to effect the purposes of this order.

Section 4. This ordinance shall be signed by the president or Vice President of the Board and attested to by the Secretary. The Secretary shall certify to the passage of this ordinance by the Board, shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and shall cause a certified copy of this ordinance to be filed forthwith with the City Clerk.

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Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

This ordinance shall take effect on the 31st day after its final passage.

_____
President

ATTEST:

_____
Secretary

I hereby certify that the foregoing ordinance was adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of _____, 2006 by the following vote:

Ayes: Commissioners: _____

_____

Noes: Commissioners: _____

Absent: Commissioners: _____

Not Voting: Commissioners: _____

_____
Secretary

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

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FIRST AMENDMENT TO
ALAMEDA CORRIDOR
USE AND OPERATING AGREEMENT

THIS FIRST AMENDMENT TO ALAMEDA CORRIDOR USE AND OPERATING AGREEMENT (this "**Amendment**"), dated for reference purposes only as of July 5, 2006, is entered into by and among (i) **BNSF RAILWAY COMPANY**, a Delaware corporation (formerly known as The Burlington Northern Santa Fe Railway Company and 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 referred to herein as "**Ports**"), and (v) **ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**, a joint powers authority created under the laws of the State of California ("**ACTA**"). BNSF, UP, POLA, POLB and ACTA are collectively referred to herein as the **"Parties"**.

RECITALS

A. The Parties have previously entered into the Alameda Corridor Use and Operating Agreement dated as of October 12, 1998 (the "**Original Agreement**").

B. ACTA, UP and BNSF are parties to a mediation proceeding with Hon. Layn R. Phillips (Ret.) as mediator that occurred on May 15 and 16, 2006 (the "**Mediation Proceeding**") relating to certain provisions of the Original Agreement. The Ports actively participated in the Mediation Proceeding through designated representatives who were in attendance.

C. The matter in dispute concerns the assessment by ACTA on BNSF and UP of fees and charges against containers and/or containerized cargo that originate or terminate at the Ports and that are subject to any practice by which cargo from a container is placed in or transferred to another container, including, without limitation, practices known as "transloading," "cross-docking," "consolidating," or "repackaging" that may involve value-added services on the cargo or combining the cargo with other cargo and other similar practices regardless of how named (the "**Transloading Dispute**" and all such practices are referred to in this Agreement as "**Transloading**" or "**Transloaded**"), except the transfer of cargo from one container to another or unloading and reloading of the same container that occurs because such transfer or the cargo unloading and reloading is required by federal or state laws or regulations pertaining to homeland security, or federal laws or regulations pertaining to customs or immigration (each, a "**Governmental Transfer**") is deemed not to be "Transloading" or "Transloaded" and is excluded from the definitions of "Transloading", "Transloaded" and "Transloading Dispute".

D. The Parties have agreed to settle all questions regarding the Transloading Dispute by entering into a Settlement and Release Agreement among the Parties (the "**Settlement Agreement**").

E. One of the conditions of the Settlement Agreement is that the Parties concurrently enter into this Amendment, which amends the Original Agreement.

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, the Parties hereby agree as follows:

AGREEMENT

1. All Recitals are hereby incorporated as binding and operative provisions of this Amendment.

2. Except as otherwise defined in this Amendment, including the introductory paragraph and Recitals hereto, capitalized terms used in this Amendment, shall have the meanings assigned thereto in the Original Agreement.

3. The first sentence of Section 7.3(c) is deleted in its entirety and replaced with the following sentence:

> "(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) April 15, 2062 (being the date sixty (60) years after the April 15, 2002 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 paid 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)."

4. Effective on the Fee Increase Date (as defined in Section 12 below):

> " Effective on and after the Fee Increase Date, the Schedule of Use Fees for Waterborne Containers shall be as follows:
>
> | | |
> |---|---|
> | • Waterborne Containers | $17.65 per TEU (Loaded)
$4.47 per TEU (Empty)" |

5. Section 7.3(e)(1) is deleted in its entirety and replaced with the following language:

> "1. **Waterborne Containers**" shall mean containers which are loaded onto or discharged from a vessel or barge at the Ports. The transportation movement of a container as a Waterborne Container terminates when the container's cargo is unloaded unless the Waterborne Container is reloaded with the same cargo and/or with cargo from one or more other Waterborne Containers as a Governmental Transfer and not for a substantial

commercial purpose. "**Non-Waterborne Containers**" shall mean all containers which are not Waterborne Containers, regardless of whether the container holds cargo that has been Transloaded from a Waterborne Container.

6. A new Section 7.3(e)(6) is added as follows:

"(6) The Transloading or other unloading of a Waterborne Container after it has been transported eastbound over the Rail Corridor will not affect the amount of the Use Fee that is due for such transportation over the Rail Corridor."

7. Section 7.3(e)(4) is deleted in its entirety and replaced with the following language:

"4. Use Fees shall be increased effective on January 1 of each year, commencing January 1, 2003 and on January 1 of each year thereafter, based on changes in the CPI for the twelve (12) month period ending the immediately preceding October 31 (i.e., the first increase shall go into effect on January 1, 2003); provided, however, in no event shall such increase be (i) less than 1.5% or greater than 3.0% in any given calendar year for the calendar years 2003 through and including 2006, and (ii) less than 1.5% or greater than 4.5% in any given calendar year for the calendar year 2007 and each calendar year thereafter, and no reduction shall be made if the CPI decreases."

8. The first and second sentences of Section 7.3(g) are deleted in their entirety and replaced with the following language:

"(g) Commencing April 15, 2002, each Railroad also shall pay to ACTA, in the manner specified in Section 7.6 and at the same rate per TEU set forth in Section 7.3(e) for Use Fees for loaded Waterborne Containers (as such rate is adjusted from time to time pursuant to Section 7.3(e)(4)), a charge ("**Container Charges**") on each loaded Waterborne Container that originates or terminates at the Ports and that 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 has already 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."

9. A new Section 7.3(h)(ix) is added as follows:

"(ix) In the event that, at any time or times on or after the Fee Increase Date, a Shortfall Advance is made by POLA and POLB as required by Section 7.3(h)(i) (a "**Subsequent Shortfall Advance**"), then, commencing sixty (60) days following receipt by the Railroads of notice by ACTA that

a Subsequent Shortfall Advance has been made by POLA and POLB pursuant to Section 7.3(h)(iii) (but commencing, in no event, prior to the date that the Subsequent Shortfall Advance payment is actually due from POLA and POLB), Use Fees for loaded Waterborne Containers and Container Charges, as more fully described in Sections 7.3(e) and 7.3(g), respectively, each shall be increased by $1.00 per TEU (which $1.00 amount shall be increased annually per Sections 7.3(e)(4) and 7.3(g) commencing January 1, 2007, including years in which such rate increase is not imposed) (the "**Temporary Increases**"). The Temporary Increases shall only be used as provided in Section 7.3 and shall remain in effect only until such time as all then-outstanding Subsequent Shortfall Advances (plus accrued interest thereon as provided in Section 7.3(b)(5)) are either actually refunded by ACTA to POLA and POLB or required to be refunded in accordance with the order of priority listed in Section 7.3(b) (including the order of priority listed in Section 7.3(b)(5)). The amounts of any Temporary Increases collected after such time shall be promptly credited by ACTA against future Use Fees and Container Charges in the order Use Fees and Container Charges become due beginning with the month immediately subsequent to such time. ACTA shall provide written notice to UP and BNSF of (A) projected and actual Shortfall Advances concurrently with the notices provided to the Ports pursuant to Sections 7.3(h)(ii) and (iii), (B) payment of Subsequent Shortfall Advances by POLA and POLB, and (C) the actual refunding or required refunding of all Subsequent Shortfall Advances and interest thereon promptly after such refunding actually occurs or is required to occur, using the order of priority listed in Section 7.3(b) (including the order of priority listed in Section 7.3(b)(5)). The Parties acknowledge that the Temporary Increases provided for in this Section 7.3(h)(ix) may be imposed from time to time throughout the term of this Agreement whenever a Subsequent Shortfall Advance occurs."

10. A new Section 7.3(n) is added as follows:

"(n) Notwithstanding anything to the contrary contained in Section 7.3, ACTA may, but is not required to, apply $.40 per TEU (which $.40 per TEU shall be increased annually by changes in the CPI per Sections 7.3(e) and 7.3(g), respectively, commencing January 1, 2007) of each of (i) the Use Fees on loaded Waterborne Containers under Section 7.3(e) and (ii) the Container Charges under Section 7.3(g), and in effect from time to time (i.e., taking into account CPI increases), to pay the Port Advances referred to in Section 7.3(b)(5)(i) and/or the Property Assembly Reimbursement (until all such obligations are paid in full), in such amounts and in such order of priority as POLA and POLB shall direct ACTA to apply; provided, however, that such application shall comply with all requirements and conditions as may be contained in the Master Trust Indenture and/or as may be imposed from time to time by any applicable lender, rating agency or bond insurer. Neither UP nor BNSF

shall have any responsibility with respect to the application of such portion of the Container Charges and Use Fees. Any inability, for any reason, to apply such portion of the Container Charges and Use Fees in the manner referred to in this Section 7.3(n) will not affect the enforceability of this Agreement or the Settlement Agreement."

11. Mediation. Section 14.4 of the Original Agreement is deleted in its entirety and replaced with the following:

"**14.4 Mediation**. In the event of a claim or dispute arising out of the Original Agreement, Amendment or Settlement Agreement, the Parties involved with the claim or dispute shall make good faith efforts to resolve the matter through negotiations for a period of 30 days after receipt of written notice of the claim or dispute, which notice shall reference this Section 14.4. After expiration of such 30 day period for negotiation, any Party may request non-binding Mediation regarding such claim or dispute by serving a written request for Mediation, identifying the nature of the claim or dispute, on any other Party ("Mediation Notice"). Mediation shall be completed as soon as practicable after receipt by the Parties to the claim or dispute of the Mediation Notice and, unless otherwise agreed by all Parties to the Mediation, in no event later than one hundred and twenty (120) days after receipt by the last Party served with the Mediation Notice.

If the Mediation Notice is served on or before August 31, 2008, the Mediation shall be conducted by retired United States District Judge Layn R. Phillips, unless he is unavailable to conduct the Mediation within the time period allowed for completion of the Mediation. Otherwise, the Parties shall attempt to agree on a mediator within fifteen (15) days after receipt by all Parties of the Mediation Notice or having been informed of Judge Phillips' unavailability. If the Parties are unable to agree on a mediator, any Party may make a written request to the Los Angeles office of JAMS to provide the Parties the names of three mediators, each of whom must be a retired state or federal judge who is available within the remaining time period for completion of the Mediation. If the Parties are unable to agree to one of the three mediators, JAMS shall select one of the three proposed mediators. The mediator's fees and costs shall be shared as may be agreed upon by the Parties in advance of the Mediation or, in the absence of agreement, one-half by ACTA, POLA, and POLB and one-half by the Railroad(s) regardless of the number of Parties actually participating in the Mediation. However, in disputes between ACTA, POLA and /or POLB only, the Railroads shall not contribute toward the fees and costs, in disputes between BNSF and UP only, ACTA, POLA and POLB shall not contribute toward the fees and costs. Mediation under this Section shall be confidential.

In the event a claim or dispute submitted to Mediation under this Section is not resolved by Mediation, any subsequent lawsuit based upon such

claim or dispute shall be initiated in Superior Court for the County of Los Angeles."

12. Fee Increase Date. The Fee Increase Date is sixty (60) days after the last to occur of (i) notice is given to the Railroads by POLA of final approval of this Amendment and the Settlement Agreement by the City Council of the City of Los Angeles, (ii) notice is given to the Railroads by POLB of final approval of this Amendment and the Settlement Agreement by the City Council of the City of Long Beach, and (iii) execution of this Amendment and the Settlement Agreement by each of POLA, POLB and ACTA.

13. Binding Effect. This Agreement is not effective until fully executed and delivered by the Parties. If this Agreement is not delivered to BNSF and UP, fully executed by ACTA, POLA and POLB on or before November 1, 2006, then BNSF's and UP's execution of this Agreement will be null and void.

14. Original Agreement to Remain in Effect. Except as amended by this Amendment, the Original Agreement shall remain in full force and effect.

15. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument. Facsimile copies of an executed counterpart shall be deemed sufficient for execution of this Amendment.

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

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____
Name: _____
Its: _____

Approved as to form this _____
day of _____, 2006

By: _____
Name: _____
Its: _____

UP

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Its: _____

Approved as to form this _____
day of _____, 2006

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[SIGNATURES ON NEXT PAGE]

POLB

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

By: _____
Name: _____
Its: _____

Approved as to form this _____
day of _____, 2006

_____, City Attorney

By: _____
Name: _____
Its: _____

POLA

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

By: _____
Name: _____
Its: _____

ATTEST:
By: _____
Name: _____
Its: _____

Approved as to form this _____
day of _____, 2006

_____, City Attorney

By: _____
Name: _____
Its: _____

ACTA

ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY,
a Joint Powers Authority

By: _____
Name: _____
Its: _____

Approved as to form this _____
day of _____, 2006

By: _____
Name: _____
Its: _____