

TRANSMITTAL 1

MEMORANDUM OF AGREEMENT

PORT OF LONG BEACH PIER B ON-DOCK RAIL SUPPORT FACILITY LOCOMOTIVE FACILITY TURNOUT AND CROSSOVER CONNECTING TO THE ALAMEDA CORRIDOR

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made and entered into by and between the **Alameda Corridor Transportation Authority** ("ACTA"), the **City of Los Angeles, acting by and through its Board of Harbor Commissioners** ("POLA"), the **City of Long Beach, acting by and through its Board of Harbor Commissioners** ("POLB" and, together with POLA, the "**Ports**"), the **BNSF Railway Company** ("BNSF") and **Union Pacific Railroad Company** ("UP" and, together with BNSF, the "**Railroads**"), with reference to the following Recitals:

RECITALS

WHEREAS, POLB desires to undertake construction of a segment of its Pier B On-Dock Rail Support Facility Program by constructing a locomotive storage and fueling facility as shown on Figure "A", attached hereto and incorporated herein by reference ("Locomotive Facility"). Said construction that occurs on ACTA jurisdiction is shown on Figures A and B, including a turnout from ACTA mainline (MT-2) at milepost (MP) 17.48 ("Turnout"); a new crossover between ACTA mainlines at Anaheim Street milepost (MP) 17.66; realignment of the existing mainlines to facilitate the new turnout and crossover; and new signal systems, including a cantilevered signal located at the 15ft Clear Point (collectively, the "Locomotive Facility Turnout and Crossover"). Portions of the Locomotive Facility located outside of ACTA jurisdiction are northeastward of the 15ft Clear Point to approximately 3400 East I Street, Wilmington, CA 90744;

WHEREAS, POLB desires to construct the Locomotive Facility Turnout and Crossover, which also consists of attendant facilities, including, but not limited to, electrical appurtenances and signal system modifications, to connect the Locomotive Facility to the Alameda Rail Corridor via a rail turnout located near Control Point Perry and East I Street in Wilmington, and crossover located between ACTA mainlines at Anaheim Street, which improvements are shown on Figures A and B attached hereto and incorporated herein by reference;

WHEREAS, the Locomotive Facility, as well as the related Turnout and Crossover, are intended, in part, and are expected, to improve operational efficiencies for the parties' operations, including the operation of rail traffic in the Alameda Corridor;

WHEREAS, ACTA, the Ports and the Railroads entered into an Amended and Restated Use and Operating Agreement, dated as of December 15, 2016 ("Use and Operating Agreement"), which sets forth the terms and conditions for the financing, use, operation, maintenance and repair of the Alameda Corridor;

WHEREAS, ACTA, the Ports and the Railroads desire to enter into this Agreement to establish the terms and conditions pursuant to which the Locomotive Facility Turnout and Crossover will be designed and constructed, and to agree that the Use and Operating Agreement shall apply to the Locomotive Facility and the Locomotive Facility Turnout and Crossover; and

WHEREAS, capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning set forth in the Use and Operating Agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Design and Construction of the Locomotive Facility Turnout and Crossover

(a) Design. POLB shall prepare or cause to be prepared a design plan (the “Design Plan”) for the Locomotive Facility Turnout and Crossover and any other components within the jurisdiction of the ACTA Use Permit. ACTA or its subcontractors shall provide a prompt compliance review of the Design Plan and ACTA’s Chief Executive Officer shall approve the start of construction, which approval will not be unreasonably withheld. POLA has design approval on property jointly owned with POLB via issuance of the required Harbor Engineers Permit (HEP). POLB shall prepare the Design Plan so that it complies with all applicable requirements set forth in the Use and Operating Agreement, including but not limited to Article 2.5, and generally consistent with the existing Track Schematic Drawings.

(b) Construction. POLB, at its sole cost and expense and in accordance with the Design Plan, shall cause its contractor(s) to (i) construct and install the Locomotive Facility Turnout and Crossover as shown in Figures A and B, and necessary attendant facilities, including, but not limited to, electrical appurtenances and signal system modifications, (ii) remove and/or realign a portion of the existing track on the Rail Corridor that is necessary to perform construction and installation of the Locomotive Facility Turnout and Crossover, and (iii) undertake any work related to such installation. During such construction and installation, POLB shall provide ACTA with periodic updates (but no less than monthly) with respect to any anticipated or proposed changes to the Design Plan, costs and expenses associated with the work. With respect to any work done on property jointly owned by POLA and POLB, POLB shall obtain a POLA Harbor Engineers Permit (HEP) prior to the start of construction on said property.

POLB shall notify ACTA at least ten (10) days prior to undertaking any work connected with the Locomotive Facility Turnout and Crossover that is adjacent (within 25 feet) to the Rail Corridor and to comply with all of ACTA’s safety procedures during the construction and installation of the Locomotive Facility Turnout and Crossover and signal system. At all times during the installation and construction process, ACTA and its representatives shall have access to the site and may monitor and inspect the progress of the work performed by POLB and/or its contractors. ACTA may require POLB to make corrections to any work which is noncompliant with the Design Plan, the Use and Operating Agreement and/or industry construction standards. All such work shall be performed in accordance with all applicable laws, regulations and orders.

POLB shall provide written notice to ACTA within ten (10) days following completion of the work in order for ACTA and/or its representatives to inspect the completed project prior to the commencement of operations.

POLB shall cause its contractor(s) to design and undertake all necessary modifications to the Rail Corridor's signal system in order to accommodate the Locomotive Facility Turnout and Crossover. The design of such modifications shall be included in the Design Plan and subject to the review and approval by ACTA and POLA prior to such modifications being made, which approval shall not be unreasonably withheld.

ACTA, the Ports, and the Railroads agree to cooperate in good faith in the scheduling and coordination of all work so that the construction of the Locomotive Facility Turnout and Crossover will progress as expeditiously as possible under the circumstances and with minimal, if any, interference with operations on the Rail Corridor.

(c) Cost. POLB shall be solely responsible for all costs and expenses directly associated with the permitting, design and construction of the Locomotive Facility Turnout and Crossover, including, without limitation, (i) removal and/or realignment of the existing track as provided in Section 1(b) and any other improvements and relocation or protection of any existing utilities or other third-party facilities, (ii) construction and installation of the Locomotive Facility Turnout and Crossover and Locomotive Facility, (iii) modifications to the Rail Corridor's signal system as provided in Section 1(b), (iv) review and approval of the Design Plan, and (v) coordination and oversight of the work as provided in this Agreement. For clarity, any costs and expenses incurred by or on behalf of ACTA in connection with the foregoing shall be reimbursed by POLB pursuant to a separate, written reimbursement agreement between POLB and ACTA.

(d) Approvals. POLB shall obtain and maintain in effect all necessary approvals, consents, permits and licenses with respect to the design and construction of the Locomotive Facility Turnout and Crossover, including, without limitation, all necessary approvals under the California Environmental Quality Act (CEQA) and as required by the POLA and ACTA.

(e) Liability. For the purposes of the design and construction of the Locomotive Facility Turnout and Crossover, POLB hereby agrees to indemnify, defend and save harmless ACTA, POLA, and Railroads, and each of them and their respective officers, directors (if applicable), employees, successors and assigns, agents and representatives (the "Indemnified Parties") for or on account of any liabilities, losses, actions, claims, damages, costs and judgments and all reasonable expenses incurred in connection therewith (including reasonable attorneys' fees) (collectively, "Losses") which may result directly or indirectly from any act or omission of POLB or its tenants, employees, agents, contractors, or invitees relating to activities involved in the design and construction of the Locomotive Facility Turnout and Crossover or this Agreement, including, without limitation, Losses for (i) damage to property, (ii) injury to or death of any person, or (iii) a breach by POLB of the terms of this Agreement or any other agreement affecting or governing the design and construction of the Locomotive Facility Turnout and Crossover, or of any law, ordinance or regulation, or a failure by POLB to obtain or maintain any license, permit, franchise or other governmental approval required by law, it being understood and agreed that all risk of such Losses shall be and is hereby assumed by POLB, except to the extent such

Losses are the result of the negligence or willful misconduct of the Indemnified Party. POLB hereby acknowledges and agrees that no approval or consent provided by ACTA, POLA, UP, and BNSF pursuant to this Agreement shall relieve POLB of its liability obligations hereunder. The provisions of this Section 1(e) shall survive the termination of this Agreement.

(f) Hazardous Substances. As used in this Agreement, the term “Hazardous Substance” means any product, substance, chemical, material or waste, the presence, nature, quantity and/or intensity of which, either by itself or in combination with other materials on or within the area shown in Figure A (“Work Site”), is either: (i) potentially injurious to the public health, safety or welfare, or the environment or the Work Site; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of ACTA, POLA, UP, or BNSF to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, any substance or material deemed hazardous or toxic pursuant to any federal or state statute or regulation. POLB shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees at any time to handle, use, manufacture, store, release or dispose of any Hazardous Substances in or about the Work Site. During the design and construction of the Locomotive Facility Turnout and Crossover, POLB shall notify, in addition to appropriate regulatory agencies, ACTA within two (2) days following the release of any Hazardous Substances onto or from the Work Site. Upon the release, discharge or spill of any Hazardous Substances arising from or caused by POLB, its employees, agents, invitees or affiliated predecessors in interest, POLB, at its cost, shall promptly remove and/or remediate and dispose of all such Hazardous Substances in accordance with the provisions below, and restore the Work Site, to the extent practicable, to the condition it was in prior to the release of the Hazardous Substances.

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

Section 2. Use and Operation of the Locomotive Facility Turnout and Crossover

(a) Use and Operating Agreement Definitions. The parties hereto agree that the Locomotive Facility Turnout and Crossover, as shown on Figures A and B, are facilities that are encompassed by the existing definitions in the Use and Operating Agreement, including but not limited to those definitions for Port-Owned Tracks, Rail Corridor, and Track. The parties hereto further agree that the Locomotive Facility from the 15ft Clear Point northeastward to the Locomotive Facility as shown on Figure A are encompassed by the existing definitions in the Use

and Operating Agreement, including but not limited to those definitions for Port Facilities and Port Rail Agreements. For the avoidance of doubt, the parties hereto acknowledge and agree that ACTA's jurisdiction under the Use and Operating Agreement is not modified or expanded by virtue of this Agreement, but that the Locomotive Facility Turnout and Crossover are facilities within the scope and jurisdiction of the existing Use and Operating Agreement.

(b) **Dispatching.** The parties hereto agree that locomotive movements through the Turnout, into and out of the Locomotive Facility shall be performed according to the terms and conditions of the Use and Operating Agreement, including but not limited to, Article III.

(c) **Maintenance.** The parties hereto agree that maintenance, repairs and replacement of the Locomotive Facility Turnout and Crossover as shown on Figures A and B shall be performed according to the terms and conditions of the Use and Operating Agreement, including but not limited to, Articles VII and VIII.

(d) **Security.** The parties hereto agree that security for the Locomotive Facility Turnout and Crossover as shown on Figures A and B shall be performed according to the terms and conditions of the Use and Operating Agreement.

(e) **Liability.** The parties hereto agree that liability issues (other than those for design and construction as set forth herein) for the Locomotive Facility Turnout and Crossover as shown on Figures A and B shall be subject to the terms and conditions of the Use and Operating Agreement, including but not limited to, Article XI.

(f) **Miscellaneous.** The Parties agree that for any matters not set forth in this Agreement with respect to the use and operation of the Locomotive Facility and Locomotive Facility Turnout and Crossover, any applicable terms and conditions of the Use and Operating Agreement shall apply.

Section 3. Effect on Existing Project Agreements. This Agreement does not and is not intended to amend, change, alter or otherwise modify the provisions of the Use and Operating Agreement. To the extent the terms of this Agreement conflict with the provisions of the Use and Operating Agreement, the provisions of the Use and Operating Agreement shall control.

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

Section 5. Severability. Each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law to the fullest extent possible. In the event, however, that any provision contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, then, in order to effect the purposes of this Agreement it shall be construed as if such provision had never been contained herein and the remainder of this Agreement shall have full force and effect.

Section 6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached

therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except have additional signature pages executed by other parties to this Agreement attached thereto.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts-of-law rules and principles of such State.

[Signatures on following page]

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

**ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY**

Dated: _____, 2024

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

Attest: _____
Secretary

APPROVED AS TO FORM

_____, 2024
HYDEE FELDSTEIN SOTO, Los Angeles City Attorney

By _____
Heather M. McCloskey, Deputy
ACTA Co-General Counsel

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

Dated: _____, 2024

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

APPROVED AS TO FORM AND LEGALITY

_____, 2024
HYDEE FELDSTEIN SOTO, Los Angeles City Attorney
STEVEN Y. OTERA, General Counsel

By _____
Helen J. Sok, Deputy

[Signatures Continue on Next Page]

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

Dated: _____, 2024

By: _____
MARIO CORDERO
Chief Executive Officer

APPROVED AS TO FORM

_____, 2024
DAWN MCINTOSH, Long Beach City Attorney

By _____
Thomas Y. Oh, Deputy City Attorney

BNSF RAILWAY COMPANY,
a Delaware corporation

Dated: _____, 2024

By: _____
(Name), (Title)

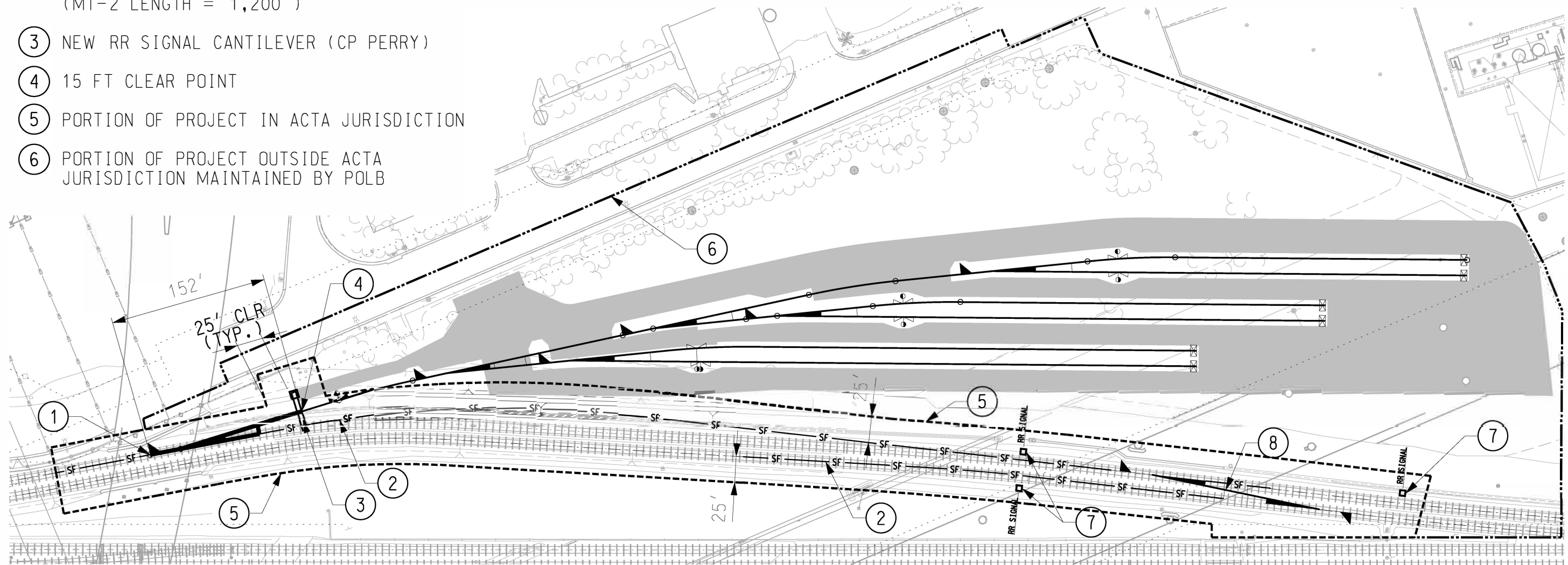
**UNION PACIFIC RAILWAY
COMPANY**, a Delaware corporation

Dated: _____, 2024

By: _____
(Name), (Title)

KEY ITEMS:

- ① NEW NO 9. TURNOUT FROM ACTA MT-2;
POINT OF SWITCH (POWERED) AT MP 17.48
- ② SHIFT EXISTING TRACK MT-1 & MT-2
(MT-1 LENGTH = 500')
(MT-2 LENGTH = 1,200')
- ③ NEW RR SIGNAL CANTILEVER (CP PERRY)
- ④ 15 FT CLEAR POINT
- ⑤ PORTION OF PROJECT IN ACTA JURISDICTION
- ⑥ PORTION OF PROJECT OUTSIDE ACTA JURISDICTION MAINTAINED BY POLB
- ⑦ HIGH/DWARF SIGNALS (CP GASPUR)
- ⑧ NEW NO.11 CROSSOVER (POWERED) AT MP 17.66

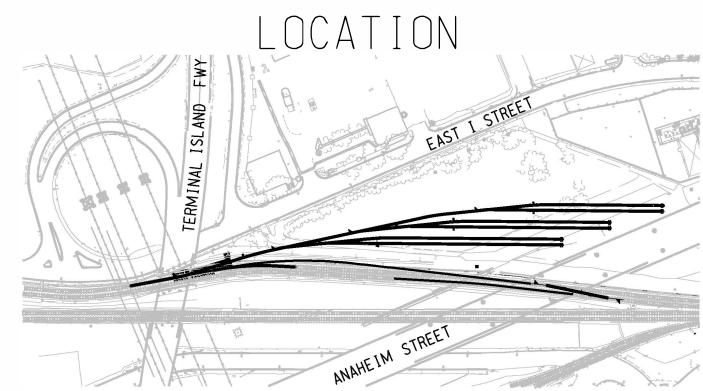
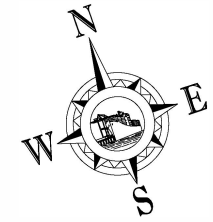


LEGEND:

- EXISTING TRACK CENTERLINE
- NEW TRACK
- SF— SHIFT EXISTING TRACK
- - - - PROJECT LIMIT LINE
- PARCEL LINES
- - - - ACTA JURISDICTION



SCALE: 1"=100'



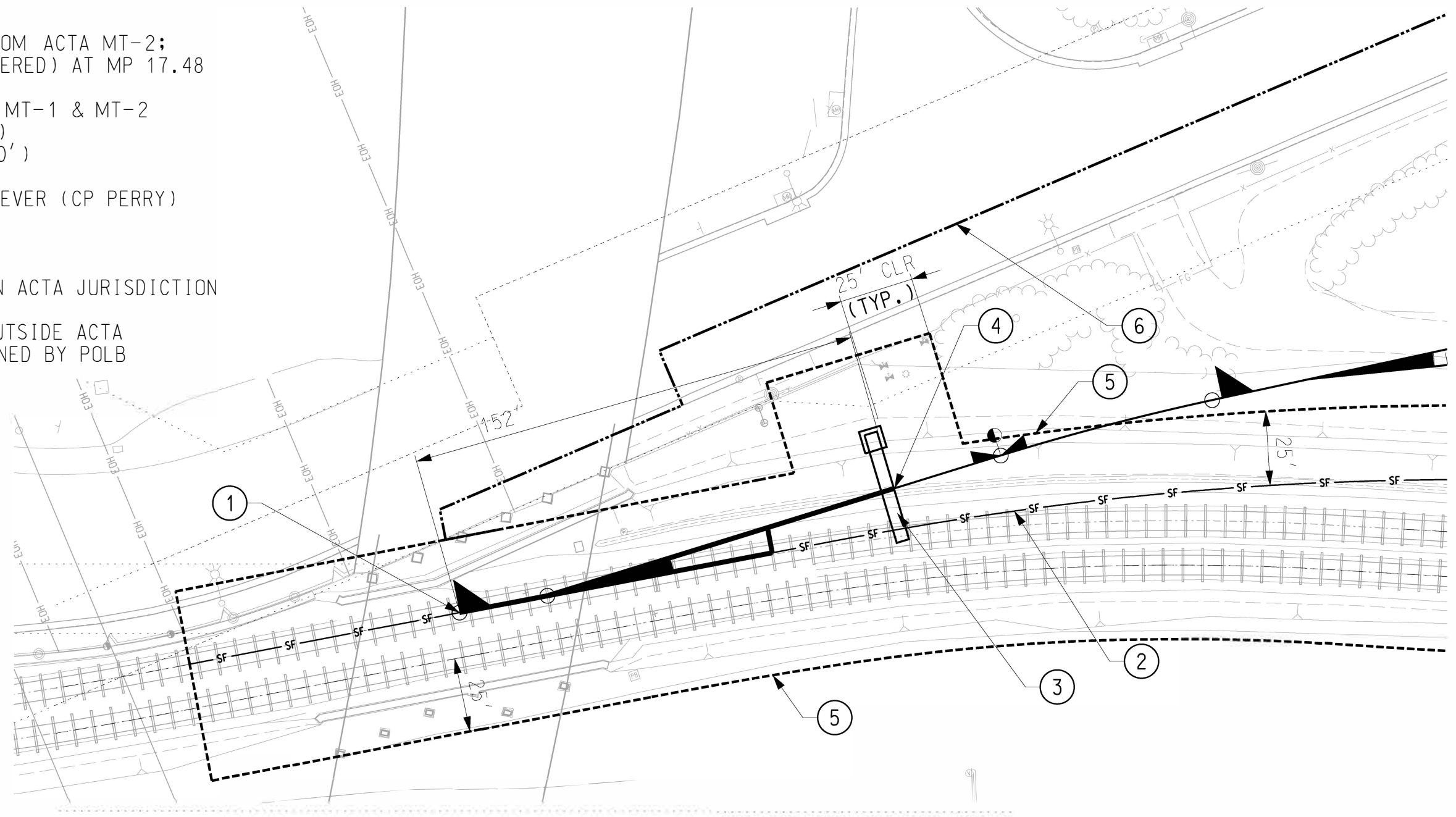
CONCEPT ALIGNMENT

NOT FOR CONSTRUCTION	 Port of LONG BEACH <small>THE PORT OF CHOICE</small> 	PIER B ON-DOCK RAIL SUPPORT FACILITY PROGRAM MEMORANDUM OF AGREEMENT FIGURE A - LOCOMOTIVE FACILITY TURNOUT	LAST UPDATED 3/21/2024
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EXHIBIT_A-ACTA_2024-0209.dgn

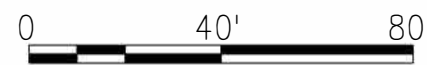
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- ④ 15 FT CLEAR POINT
- ⑤ PORTION OF PROJECT IN ACTA JURISDICTION
- ⑥ PORTION OF PROJECT OUTSIDE ACTA JURISDICTION MAINTAINED BY POLB



LEGEND:

- EXISTING TRACK CENTERLINE
- NEW TRACK
- sf— SHIFT EXISTING TRACK
- - - - PROJECT LIMIT LINE
- PARCEL LINES
- ACTA JURISDICTION



SCALE: 1"=40'

CONCEPT ALIGNMENT

NOT FOR
CONSTRUCTION



PIER B ON-DOCK RAIL SUPPORT FACILITY PROGRAM
MEMORANDUM OF AGREEMENT
FIGURE B - LOCOMOTIVE FACILITY TURNOUT

LAST UPDATED
3/21/2024