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**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY**

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3760 KILROY AIRPORT WAY, SUITE 200, LONG BEACH, CALIFORNIA 90806 – TEL. (562) 247-7777 • FAX (562) 247-7090

January 29, 2021

**To:** Parties listed on Exhibit A

**Subject:** Notice of Mutual Agreement No. 2021-1 - Request for Approval under Amended and Restated Alameda Corridor Use and Operating Agreement

**Matter:** Term Extension through October 14, 2021 for Alameda Corridor Dispatching Agreement dated as of January 30, 2002, as amended

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Alameda Corridor Use and Operating Agreement (the Operating Agreement), dated December 15, 2016, by and among the BNSF Railway Company (BNSF), Union Pacific Railroad Company (UP), 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 the Alameda Corridor Transportation Authority (ACTA).

The Operating Agreement governs the use and operation of the Alameda Corridor and, among other things, contains provisions that enable certain parties to make decisions from time to time by Mutual Agreement (as defined in the Operating Agreement) or unanimous consent/approval. In particular, Mutual Agreement requires the approval from at least three of the following parties: BNSF, UP, POLB, and POLA, while unanimous consent/approval requires the approval of each of the same four entities. Pursuant to the terms of the Agreement, ACTA as an entity does not approve or disapprove Mutual Agreement matters.

Attached as Exhibit B is Notice of Mutual Agreement (NMA) No. 2021-1, for which approval by the requisite parties is requested at this time. The matter to be approved is described in the attached NMA (the "Matter"). Following consideration and approval of the Matter, please email to ACTA a signed copy of the attached NMA; or, if such Matter is not approved by your entity, provide a written statement indicating such disapproval. Your response is requested no later than March 5, 2021. Once all responses are received, ACTA will send a letter to the four entities with the results.

If there are any questions, please advise.

Sincerely,

Michael C. Leue, P.E.  
Chief Executive Officer

**EXHIBIT A**  
**LIST OF PARTIES**

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90733  
Attn: Executive Director  
Email: gene\_seroka@portla.org

Port of Long Beach  
415 W. Ocean Blvd., 11<sup>th</sup> Floor  
Long Beach, California 90802  
Attn: Executive Director  
Email: mario.cordero@polb.com

BNSF Railway Company  
2500 Lou Menk Drive  
AOB -Garden Level  
Fort Worth, Texas 76131  
Attn: Assistant Vice President -  
Contracts & Joint Facilities  
Email: sarah.bailiff@bnsf.com

Union Pacific Railroad Company  
1400 Douglas Street -Stop 1180  
Omaha, Nebraska 68179  
Attn: Director Joint Facilities  
Email: melissagrosz@up.com

Cc:

Email: hmccloskey@portla.org

Email: Lauren.Misajon@longbeach.gov

Email: Brian.Aman@bnsf.com

Email: Katherine.Sieversen@bnsf.com

Email: jbarager@up.com

Email: tqioiello@portla.org

Email: HSok@portla.org

Email: GMartinez@portla.org

Email: KCartwright@portla.org

Email: David.Albers@longbeach.gov

Email: duane.kenagy@polb.com

Email: carlo.luzzi@polb.com

**EXHIBIT B**  
**NOTICE OF MUTUAL AGREEMENT**

**Number: NMA 2021-1**

**Subject: Request for Approval to Extend the Alameda Corridor Dispatching Agreement dated as of January 30, 2002, as amended.**

**Recommendation:**

Approve an up to six-month extension through October 14, 2021 to the term of the Alameda Corridor Dispatching Agreement, dated as of January 30, 2002, as amended, between ACTA, the BNSF Railway Company, and Union Pacific Railroad Company, which agreements are set to expire April 14, 2021.

**Discussion:**

The Amended and Restated Use and Operating Agreement (UOA) requires that the Ports and Railroads, through Mutual Agreement, select the corridor dispatcher and security provider and that ACTA endeavor to enter into an agreement with the selected entity on the business terms specified by the Owner (Ports) and Railroads.

The existing Dispatching Agreement (Agreement) between ACTA, the BNSF Railway (BNSF), and Union Pacific Railroad (UP) have been in place since 2002 and will expire on April 14, 2021. Costs for the services provided under Agreement are paid directly by the Railroads.

The original term of the Agreement was five years, as approved by the former Operating Committee (OC), and both were extended twice with OC approval for an additional 10 years via two amendments through April 14, 2017. An interim extension of up to one year through April 14, 2018 was provided for in the second amendment to both agreements, which was exercised. Additional six-month extensions through October 14, 2018 and April 14, 2019, a one-year extension through April 14, 2020, and additional six-month extensions through October 14, 2020 and April 14, 2021 were approved (via NMA-2018-2, NMA-2018-3, NMA-2019-2, NMA-2020-2 and NMA 2020-3, respectively).

Approval of an additional up to six-month extension of the existing Agreement is hereby requested, until such time as subsequent amended and restated Agreement is approved and executed or through October 14, 2021, whichever is earlier. The proposed amendment to the existing Agreement is attached.

The parties will subsequently be negotiating amended and restated Agreement, which will include assignment of dispatch parties and responsibilities and a more substantial extension of the term. Approval of the subsequent amended and restated Agreement will be the subject of a future Notice of Mutual Agreement.

Attachment: 8<sup>th</sup> Amendment to Dispatching Agreement

**Please provide your acceptance and approval by affixing your signature, name and title below:**

**Port of Los Angeles**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**Port of Long Beach**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**BNSF Railway Company**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**Union Pacific Railroad Company**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Attachment to Exhibit B

**EIGHTH AMENDMENT TO  
ALAMEDA CORRIDOR DISPATCHING AGREEMENT**

**THIS EIGHTH AMENDMENT TO ALAMEDA CORRIDOR DISPATCHING AGREEMENT** (this "**Amendment**") is made as of April 14, 2021, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (formerly known as The Burlington Northern and Santa Fe Railway Company) ("**BNSF**"), **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**"), and **THE 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 Amended and Restated Alameda Corridor Use and Operating Agreement dated as of December 15, 2016 (the "**Operating Agreement**"), by and among the City of Long Beach, the City of Los Angeles, ACTA, BNSF and UP, certain aspects of the operations on the Rail Corridor (as defined in the Operating Agreement) are governed by Owner and Railroads (as those terms are defined in the Operating Agreement), including dispatching services.

**B.** Pursuant to the Operating Agreement, BNSF and UP were selected by Owner and Railroads to jointly act as the Rail Corridor's dispatching services providers and to perform other duties specified in that certain Alameda Corridor Dispatching Agreement dated as of January 30, 2002 (as amended, the "**Agreement**") and entered into by BNSF, UP and ACTA. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Operating Agreement unless the Amendment clearly states otherwise.

**C.** BNSF, UP and ACTA desire to hereby modify and amend the Agreement, as more particularly set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, BNSF, UP and ACTA hereby agree as follows:

**Section 1. Modification of Agreement**

**1.1** Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

**5.1 Commencement Date; Term.** The term of this Agreement, and Corridor Dispatcher's duties hereunder, commenced on April 15, 2002 ("**Commencement Date**") and unless earlier terminated as

## **Eighth Amendment to Alameda Corridor Dispatching Agreement**

provided herein, this Agreement shall automatically expire on the earlier of (i) October 14, 2021, or (ii) the date on which the Owner and Railroads, pursuant to Mutual Agreement, reappoint the Corridor Dispatcher or select a replacement corridor dispatcher and such corridor dispatcher has been engaged by ACTA and is able to commence performing dispatching services on the Rail Corridor.

### **Section 2. Counterparts.**

This Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one agreement.

[Signatures follow]

**Eighth Amendment to Alameda Corridor Dispatching Agreement**

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date first above written.

**“BNSF”**

**BNSF Railway Company**  
a Delaware corporation

Approved as to form this \_\_\_\_\_ Day of \_\_\_\_\_, 2021

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**“UP”**

**Union Pacific Railroad Company**  
a Delaware corporation

Approved as to form this \_\_\_\_\_ Day of \_\_\_\_\_, 2021

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**"ACTA"**

**Alameda Corridor Transportation Authority,**  
a Joint Powers Authority

Approved as to form this \_\_\_\_\_ Day of \_\_\_\_\_, 2021

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_