

RECOMMENDATION APPROVED;  
RESOLUTION NO. 21-9907 ADOPTED AND;  
AGREEMENT NO. 21-3608-A APPROVED  
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's  
Report to the  
Board of Harbor Commissioners

October 7, 2021

*Amber M. Klesges*  
for AMBER M. KLESGES  
Board Secretary

DATE: SEPTEMBER 28, 2021

FROM: ENVIRONMENTAL MANAGEMENT

SUBJECT: RESOLUTION NO. 21.9907 - FIRST AMENDMENT TO AGREEMENT NO. 18-3608 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND BNSF RAILWAY COMPANY FOR REIMBURSEMENT OF ENVIRONMENTAL ASSESSMENT COSTS

**SUMMARY:**

Staff requests approval of a First Amendment to Agreement No. 18-3608 (Agreement) with BNSF Railway Company (BNSF) for reimbursement of 100 percent of the costs associated with the environmental assessment required under the California Environmental Quality Act (CEQA) for the Southern California International Gateway (SCIG) project (Project). The First Amendment would extend the term of the Agreement by an additional two years, for a total of five years, to expire on October 29, 2023. BNSF is financially responsible for the expenses incurred to prepare the environmental assessment.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the First Amendment to Agreement No. 18-3608 with BNSF Railway Company extending the term by two years to October 29, 2023;
3. Direct the Board Secretary to transmit the Amendment to City Council for approval pursuant to Charter Section 373 and Section 10.5 of the Los Angeles Administrative Code;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Amendment to Agreement No. 18-3608 upon approval by City Council; and
5. Adopt Resolution No. 21.9907.

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**SUBJECT: FIRST AMENDMENT TO AGREEMENT NO. 18-3608 WITH BNSF RAILWAY COMPANY**

**DISCUSSION:**

Background and Context – The SCIG Project is a \$500 million investment by BNSF to build a new, state of the art intermodal “near dock” railyard facility located within four miles of the San Pedro Bay Ports (Ports) and connected to the Alameda Corridor. The SCIG Project would be located on an approximately 185-acre site comprised of 117 acres of City of Los Angeles (City) Harbor Department (Harbor Department) land and 68 acres of land BNSF will acquire from private parties.

In March 2013, the Board certified the SCIG Project Final Environmental Impact Report (FEIR) in compliance with the CEQA, adopted related documents and findings and approved the SCIG Project, the Site Preparation and Access Agreement (SPAA) and Permit No. 901 between the Harbor Department and BNSF.

On May 8, 2013, the City Council affirmed the Board’s certification of the FEIR, and approved the 50-year SPAA and Permit No. 901.

State court litigation trial and appeals against the City and real party in interest BNSF Railway (SCIG Litigation) ensued from 2013 to 2018, challenging the SCIG Project FEIR pursuant to CEQA.

On remand following all appeals, the trial court issued an order (Court Order) mandating that this Board and City Council must take appropriate actions to set aside the SCIG FEIR and other specified actions and approvals including the SPAA and Permit, and to suspend project activities until the City and BNSF have taken the necessary actions to comply with CEQA. In October 2018, the City filed its Initial Return to Writ of Mandate, confirming to the Court the Board and City Council completed the above actions in August and September 2018, respectively.

Prior to reconsidering the SCIG Project, the Court Order requires the Harbor Department and BNSF to prepare certain specified additional air quality analyses in a revised environmental assessment in accordance with CEQA.

Reimbursement Agreement – On October 18, 2018, the Board approved Agreement No. 18-3608, which has a three-year term expiring on October 29, 2021, and arranges for BNSF to reimburse 100 percent of the Harbor Department’s costs to prepare a revised environmental assessment under CEQA for the SCIG Project as required by the Court Order. As specified in the Agreement, a scope of work and cost estimate was developed by Harbor Department staff and reviewed by BNSF, and all payment-related provisions for which BNSF is responsible for are ongoing. Since the Agreement is set to expire on October 29, 2021, and work on the revised environmental assessment is not yet

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completed, staff recommends extending the term of the Agreement by an additional two years, for a total of five years, ending on October 29, 2023.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of an amendment to Agreement No. 18-3608 for reimbursement of 100 percent of the costs associated with the environmental assessment required for the SCIG Project pursuant to the Court Order, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

The revised environmental assessment required for the SCIG Project is currently under preparation by the Harbor Department in accordance with CEQA.

**FINANCIAL IMPACT:**

Agreement No. 18-3608 requires BNSF to reimburse the Harbor Department for 100 percent of all costs to prepare a revised environmental assessment of the SCIG Project. Accordingly, BNSF is financially responsible for all expenses incurred to prepare the environmental assessment.

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the proposed First Amendment to Agreement No. 18-3608 as to form and legality.

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SUBJECT: FIRST AMENDMENT TO AGREEMENT NO. 18-3608 WITH BNSF RAILWAY COMPANY

TRANSMITTAL:

1. First Amendment to Agreement No. 18-3608 with BNSF Railway 21-3608-A

FIS Approval: MB  
CA Approval: JC



CHRISTOPHER CANNON  
Director of Environmental Management



for MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA  
Executive Director

CC:yo  
AUTHOR: L. OCHSNER

FILE: Y:\\_ADMIN\\_BOARD REPORTS\\_CEQA\BNSF Reimbursement Agreement 2018\FIRST AMENDMENT TO AGREEMENT 18-3608\Environmental\_BNSF First Amendment\_Board Report - FINAL.docx  
UPDATED: 9/28/2021 2:53 PM - MRX

FIRST AMENDMENT TO AGREEMENT NO. 18-3608  
BETWEEN THE CITY OF LOS ANGELES AND  
BNSF RAILWAY COMPANY

THIS FIRST AMENDMENT ("Amendment") to Agreement No. 18-3608 ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"). Defined terms used herein shall have the meanings set forth in the Agreement.

WHEREAS, the Agreement set forth the agreement between the Parties for BNSF to pay the costs of preparation of the Revised EIR for the SCIG Project, to comply with the Writ of Mandate.

WHEREAS, the Agreement's term was three (3) years, commencing on October 30, 2018, and expiring on October 29, 2021.

WHEREAS, the Parties desire to extend the term by adding two (2) additional years, for a total of five (5) years, to expire on October 29, 2023.

1. The first sentence of Agreement Section 4.A. is amended to read as follows, with deletion in ~~strikeout~~ and addition underlined:

"4. TERM AND TERMINATION

A The effective date of this Agreement ("Effective Date") shall be the date of its execution by the Executive Director following authorization of the Board and compliance with Section 245 of City's Charter. The term of this Agreement shall commence upon the Effective Date and, unless terminated earlier as provided herein, shall continue until ~~five (5) years~~ have lapsed from the Effective Date."

2. Except as amended herein, all remaining terms and conditions of the Agreement shall remain unmodified and in full force and effect.

3. Subject to the provisions of Charter Section 373, the effective date of this Amendment shall be the date of its execution by the Executive Director upon authorization of the Board and City Council. Consultant is aware that pursuant to Charter Section 373 and Administrative Code Section 10.5, this Amendment requires approval by City Council prior to becoming effective.

IN WITNESS THEREOF, the parties hereto have executed this Amendment to Agreement No. 18-3608 on the date to the left of their signatures.

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

Dated: \_\_\_\_\_

By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest \_\_\_\_\_  
AMBER M. KLESGES  
Board Secretary

Dated: 9/21/21

BNSF RAILWAY COMPANY

By: [Signature]  
Roger Nabor E.V.P. Law  
(Print/type name and title)

Attest: [Signature]  
Dustin Hennessey Assistant Secretary  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2021  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By Joy M. Crose  
JOY M. CROSE, Assistant General Counsel

Digitally signed by Joy M. Crose  
DN: cn=Joy M. Crose, o=Los Angeles City Attorney's Office  
ou=Assistant General Counsel, email=jcrose@portla.org, c=US  
Date: 2021.09.29 15:29:10 -0700