

0150-11998-0000

T R A N S M I T T A L

TO Eugene D. Seroka, Executive Director Harbor Department	DATE	COUNCIL FILE NO. --
FROM The Mayor	COUNCIL DISTRICT 15	

PROPOSED FIRST AMENDMENT TO AGREEMENT NO. 18-3608 WITH BNSF RAILWAY COMPANY FOR SOUTHERN CALIFORNIA INTERNATIONAL GATEWAY ENVIRONMENTAL ASSESSMENT COST REIMBURSEMENT

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.

MAYOR

MWS:JCY:10220072t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 18, 2022

CAO File No. 0150-11998-0000

Council File No. --

Council District: 15

To: The Mayor

From: Matthew W. Szabo,  City Administrative Officer

Reference: Correspondence from the Harbor Department dated November 17, 2021; referred by the Mayor for report November 23, 2021

Subject: **PROPOSED FIRST AMENDMENT TO AGREEMENT NO. 18-3608 WITH BNSF RAILWAY COMPANY FOR SOUTHERN CALIFORNIA INTERNATIONAL GATEWAY ENVIRONMENTAL ASSESSMENT COST REIMBURSEMENT**

RECOMMENDATIONS

Approve Harbor Department (Port) Resolution No. 21-9907 authorizing a proposed First Amendment to Agreement No. 18-3608 with BNSF Railway Company to reimburse the Port for environmental assessment costs related to the Southern California International Gateway Project for two additional years; and, return the Resolution documents to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 21-9907 authorizing a proposed First Amendment (Amendment) to Agreement No. 13-3608 (Agreement) with BNSF Railway Company (BNSF) to reimburse the Port for environmental assessment costs related to the Southern California International Gateway (SCIG) Project. The proposed Amendment extends the term of the Agreement by two years, through October 29, 2023, for a total term of five years, to accommodate additional time needed to complete a revised environmental assessment (REA). Under the Agreement, BNSF is responsible for 100 percent of the Port's costs to prepare a REA for the SCIG Project as required by Court Order ^[1].

The SCIG Project is a \$500 million investment by BNSF to build a new intermodal "near dock" railyard facility located within four miles of the Port of Los Angeles (POLA) and Port of Long Beach (POLB) and connected to the Alameda Corridor, linking the Ports by express railway to downtown

[1] Fast Lane Transportation, Inc., et al. v. City of Los Angeles, et al., Contra Costa Superior Court Case No. CIVMSN 14-0300, also known as City of Long Beach, et al. v. City of Los Angeles, et al., California Court of Appeal, First Appellate District, Division Three Case No. A148993, California Supreme Court Case No. S247157.

Los Angeles. The SCIG Project site is approximately 185 acres comprised of 117 acres of Port land and 68 acres BNSF would acquire from private parties. On May 8, 2013, the Council affirmed the Board's certification of the Final Environmental Impact Report (FEIR) in compliance with the California Environmental Quality Act (CEQA), and approved the Port's 50-year Site Preparation and Access Agreement (SPAA) and Permit No. 901 with BNSF (C.F. 13-0398). Litigation on the SCIG Project subsequently commenced, challenging the FEIR. By October 2018, the Council confirmed suspension of project activities and set-aside of the SPAA and Permit until CEQA compliance was complete, in accordance with Court Order (C.F. 12-0295-S9, C.F. 13-0398).

The Port reports that, prior to reconsidering the SCIG Project, the Court Order requires the Port and BNSF to prepare certain additional air quality analyses in a REA in accordance with CEQA. In consideration of the REA requirement, the Board approved the original Agreement for BNSF to reimburse the Port for 100 percent of the REA costs at its meeting on October 18, 2018 for a term of three years, through October 29, 2021. The proposed Amendment extends the Agreement with BNSF by two years, through October 29, 2023, for a total term of five years, to accommodate additional time needed to complete the REA.

The City Attorney has reviewed the proposed Amendment and Agreement as to form and legality. In accordance with Charter Section 373 and Administrative Code Section 10.5(b)(2), the Amendment and Agreement require Council approval because the total term of the Agreement exceeds three years and estimated annual compensation may exceed the 2021-22 exemption limit of \$169,418. The Port reports that the proposed action is an administrative activity and has therefore determined that it is administratively exempt from CEQA requirements under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

FISCAL IMPACT STATEMENT

The proposed First Amendment to Harbor Department (Port) Agreement No. 18-3608 requires BNSF Railway Company to reimburse the Port for 100 percent of costs to prepare a revised environmental assessment for the Southern California International Gateway Project for two additional years, through October 29, 2023. The Port's costs are paid from and reimbursed to the Harbor Revenue Fund. The recommendations in this report comply with Port Financial Policies. There is no impact on the City General Fund.