



Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: OCTOBER 11, 2018**

**FROM: ENVIRONMENTAL MANAGEMENT**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVE REIMBURSEMENT AGREEMENT WITH BNSF RAILWAY FOR ENVIRONMENTAL ASSESSMENT COSTS**

**SUMMARY:**

Staff requests that the Board of Harbor Commissioners (Board) approve a reimbursement agreement (Reimbursement Agreement) with BNSF Railway (BNSF) in which BNSF shall reimburse the City of Los Angeles (City) Harbor Department (Harbor Department) for 100 percent of the costs of an environmental assessment under the California Environmental Quality Act (CEQA) for the proposed Southern California International Gateway (SCIG) project (Project). The term of the Reimbursement Agreement is three years. Pending approval of the Reimbursement Agreement, 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 California Environmental Quality Act (CEQA) in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines;
2. Approve the Reimbursement Agreement with BNSF Railway for a term of three years;
3. Authorize the Executive Director to execute and the Board Secretary to attest to, said Agreement for and on behalf of the Board; and
4. Adopt Resolution No. \_\_\_\_\_.

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**SUBJECT:   REIMBURSEMENT AGREEMENT WITH BNSF**

**DISCUSSION:**

Background/Context – The proposed 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 Project would be located on an approximately 185-acre site comprised of 117 acres of 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 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.

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.

2018 Board and City Council Compliance with Court Order – On August 23, 2018, the Board set aside the specified approvals of the SCIG FEIR, SPAA and Permit and ordered suspension of all SCIG Project activities pursuant to the Court Order. On September 18, 2018, the City Council set aside the specified approvals of the SPAA, Permit and SCIG FEIR pursuant to the Court Order.

Proposed Reimbursement Agreement – The proposed Reimbursement Agreement has a three-year term 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. The Reimbursement Agreement provides that a scope of work and cost estimate be developed by the Harbor Department and reviewed by BNSF along with all payment-related provisions for which BNSF would be responsible.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a Reimbursement Agreement under which BNSF reimburses the Harbor Department for its costs incurred in preparing a revised environmental assessment of the SCIG Project. As a reimbursement agreement is an administrative activity, the Director of Environmental Management has determined that the proposed action is administratively exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines. The revised environmental assessment required for the Project shall be conducted by the Harbor Department in accordance with CEQA.

**FINANCIAL IMPACT:**

Approval of the Reimbursement Agreement requires BNSF to reimburse the Harbor Department for 100 percent of all costs to prepare a revised environmental assessment of the SCIG Project.

The technical information necessary for the development of the scope of work and cost estimate is not yet developed. This Board action sets up the mechanism through which the Harbor Department can collect funds should BNSF approve a project scope of work and cost estimate.

**CITY ATTORNEY:**

The Office of the City Attorney has prepared and approved the Agreement as to form and legality.

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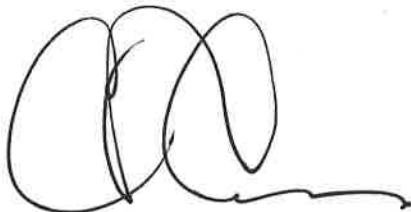
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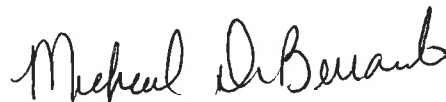
**TRANSMITTALS:**

1. Reimbursement Agreement with BNSF Railway

FIS Approval: MB  
CA Approval: jme



CHRISTOPHER CANNON  
Director of Environmental Management



MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:

 FOR

EUGENE D. SEROKA  
Executive Director

CC/YO  
AUTHOR: L. OCHSNER

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