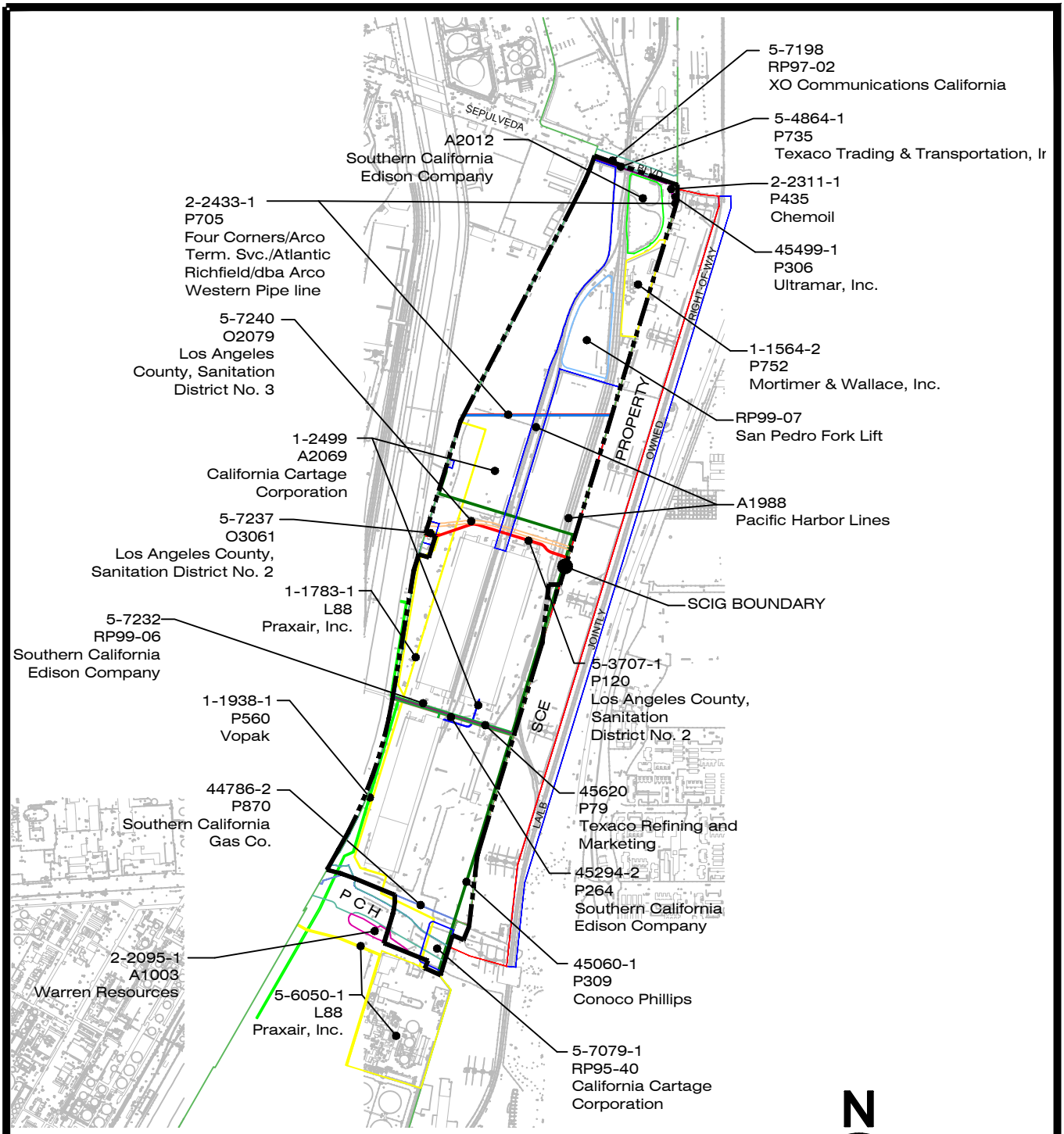

SCALE: AS-SHOWN	DATE:	RECOMMENDED FOR APPROVAL	SCIG FACILITY
DRAWN:	3/13	CHIEF OF DESIGN	LEASES, EASEMENTS AND 3RD PARTY AGREEMENTS
CHECKED:			
DESIGNED:			
ENGR/ARCH		ASSISTANT CHIEF HARBOR ENGINEER	APPROVED CHIEF HARBOR ENGINEER

THE PORT OF LOS ANGELES
ENGINEERING DIVISION
425 S. PALOS VERDES STREET SAN PEDRO CA 90731-3309

DRAWING NUMBER
EXHIBIT

POLAPRO5_VER.1_12/96

TRANSMITTAL 1

SITE PREPARATION AND ACCESS AGREEMENT
GRANTED BY THE CITY OF LOS ANGELES TO BNSF RAILWAY CO.

This Site Preparation and Access Agreement (this "Agreement") is made and entered into as of _____, 2013 by and between (a) the City of Los Angeles ("City"), a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") and (b) BNSF Railway Co. ("Developer").

RECITALS

A. City is the owner of that certain property located in the City and County of Los Angeles, California, described on Attachment 1 (the "Premises"), the state of title of which on the effective date of this Agreement is set forth in the document attached hereto as Attachment 3.

B. City desires to have Developer construct and operate, and Developer desires to construct and operate an intermodal rail facility to be entitled the "Southern California International Gateway" or "SCIG" on lands that include the Premises.

C. City and Developer have negotiated and entered into the Permit attached hereto as Attachment 2 (the "Permit"), which Permit they intend to become effective at the earlier to occur of Completion or Developer's election, as more specifically set forth below.

D. The purpose of this Agreement is to allow Developer access to and interim, non-exclusive use of the Premises under the terms and conditions set forth herein to accomplish certain necessary site preparation, construction and other work (collectively, "Developer Site Work"), and to coordinate the orderly and efficient performance of the Developer Site Work with certain other activities relative to the Premises to be undertaken by City ("City Site Work"), all of which must be accomplished in order for Completion to occur.

E. Board certified at a public Board meeting held on March 7, 2013 the March 7, 2013 FEIR, and approved the Project.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of the mutual covenants set forth in this Agreement, City and Developer do hereby covenant and agree as follows:

1. Definition of Terms. Any capitalized items used herein without definition shall have the meanings assigned to them in the glossary attached hereto as Attachment 12.

2. Term of this Agreement.

2.1. Generally. Subject to the provisions of Sections 2.2, 2.3 and 6, the term of this Agreement shall be five (5) years commencing on the date it is approved by the City Council, following execution by the Harbor Department and approval as to form and legality by the City Attorney of the City of Los Angeles ("the effective date of this Agreement"), and shall expire and become null and void without any further action of Board or City Council upon the earlier to occur of: (i) the expiration of the term of this Agreement as may be extended by exercise of the Developer Options, if any, or tolling of the running of the term; or (ii) Completion. Notwithstanding the foregoing, the term of this Agreement in no event shall exceed twelve (12) years unless Developer has commenced Developer Site Work and made material progress towards completion of same. If Developer has not commenced Developer Site Work or made material progress towards completion of same, Board may terminate this Agreement in a public meeting. As used in this Agreement, "term" may refer to Developer Option years as well as the initial five (5)-year period of the term of this Agreement, or any periods during which the running of the term of this Agreement is tolled or extended.

2.2. Developer Options. City hereby grants Developer two (2) options ("Developer Options") for Developer to extend the Agreement for two (2) separate one-year periods, which Developer Options may be exercised as long as Developer has commenced Developer Site Work subject to the other provisions of this Agreement. Developer shall exercise each Developer Option individually in writings that reference this Section 2.2, and shall transmit such writings to City in conformity with Section 25 of the Permit not less than ninety (90) days prior to the expiration of the term of this Agreement or a Developer Option period, whichever may be applicable. Developer's exercise of a Developer Option, if any, shall be irrevocable. Adherence to the procedures set forth in this Section 2.2 is a condition precedent to the effectiveness of any Developer Option exercise. Notwithstanding the foregoing, at any time during the term of this Agreement, Developer may, in a writing transmitted to Executive Director prior to the expiration of the term of this Agreement, commence the effectiveness of the Permit. In no event shall the aggregate of the term of this Agreement and the term of the Permit exceed fifty (50) years in length.

2.3. Developer Rights of Termination. The following rights of termination shall be exercised, if at all, by Developer providing forty-five (45) days' advance notice to City in a writing that references this Section 2.3 which is transmitted in conformity with Section 25 of the Permit. Within thirty (30) days following its receipt of such notice, Tenant shall render to City full payment of the License Fee to the date of termination to the extent not abated or tolled and except as provided in Section 2.3.1, and City shall render to Developer full payment of amounts owing under accrued reimbursements, and any amount of earned but unpaid Developer Credits (provided, however, that such Developer Credits shall be credited against Rent payments under the Permit if this Agreement terminates and the Permit commences). Exercise of any of the rights of termination provided by

this Section 2.3 shall terminate this Agreement following the aforementioned notice period, and render the Permit null and void upon expiration of the notice period required above, without further action of Board or City Council, and with each Party bearing their own costs of having pursued the Project, as more specifically set forth in Section 10 hereof. Exercise of the rights of termination provided by this Section 2.3 shall be irrevocable. Subject to the foregoing, Developer may terminate this Agreement at its discretion, with no further obligation to pay the License Fee, which termination shall render the Permit null and void as set forth above. Except for the right of termination provided by Section 2.3.4, Developer's rights of termination set forth in this Section 2.3 continue from the date they may be exercised under their terms until the applicable obligation is fulfilled, or the right of termination is exercised:

2.3.1. If any administrative proceeding or litigation relating to the permitting, development, construction or operation of SCIG, including without limitation the March 7, 2013 FEIR, is ongoing at the third (3rd) anniversary of the effective date of this Agreement such that Developer reasonably believes that it would be unwise to proceed with the Developer Site Work. Should Developer exercise such right, it shall, within thirty (30) days of such termination, pay to City an amount equal to the aggregate rents due and owing from the holders of the Third-Party Agreements then in place on the Premises as of the effective date of the termination, from the effective date of this Agreement to the date of such termination. Should Developer exercise any right of termination set forth in Section 2.3.1, the Parties agree that the consideration set forth in such Section 2.3.1 shall be the only fee to be paid by Developer to City, and no License Fees attributable to the period of litigation preceding such termination shall be due, provided that if Developer commences construction and obtains possession of the lands covered by the Third-Party Agreements during litigation, any License Fees tolled pursuant to this Section 2.3.1 shall be due and owing, and Developer retains any rents collected from the holders of the Third Party Agreements. During any period in which an administrative proceeding or litigation relating to the permitting, development, construction or operation of SCIG, including without limitation the March 7, 2013 FEIR, is ongoing, the running of the term of this Agreement described in Section 2.1, as well as the payment of the License Fee shall be tolled (which tolled amount shall be paid over the Term of the Permit). The Parties agree that any such tolled License Fees shall not be increased by CPI over the term of the Permit. Should the term of this Agreement be tolled as hereinabove described, the term of the Permit shall be adjusted if necessary such that the aggregate of the terms of this Agreement and the Permit shall not exceed fifty (50) years in length.

2.3.2. If (a) the real property identified on Attachment 4 is not included as part of the Premises and (b) the rights identified on Attachment 4 are not obtained, terminated, issued and/or assigned, both within thirty (30) months after the

effective date of this Agreement. Beginning thirty (30) months after the effective date of this Agreement, if (a) the real property identified on Attachment 4 is not included as part of the Premises and (b) the rights identified on Attachment 4 are not obtained, terminated, issued and/or assigned, the running of the term of this Agreement described in Section 2.1, as well as the payment of the License Fee shall be tolled (which tolled amount shall be paid over the Term of the Permit), unless and until Developer terminates or (a) the real property identified on Attachment 4 is included as part of the Premises and (b) the rights identified on Attachment 4 are obtained, terminated, issued and/or assigned. The Parties agree that any such tolled License Fees shall not be increased by CPI over the term of the Permit. Should the term of this Agreement be tolled as hereinabove described, the term of the Permit shall be adjusted if necessary such that the aggregate of the terms of this Agreement and the Permit shall not exceed fifty (50) years in length.

2.3.3. If, following a challenge of the March 7, 2013 FEIR, this Agreement or the Permit, and subsequent remand of same, Board (or City Council if it is the first City body to act) does not act on the response to the remand so as to approve or disapprove the Project within nine (9) months after occurrence of the last act necessary to effectuate such remand.

2.3.4. For any reason arising from or related to modifications to or additions to the requirements of the March 7, 2013 FEIR , SPAA or Permit, for a fifteen (15)-month period after Board's or City Council's approval of such modifications.

2.3.5. If Developer does not acquire using all reasonable efforts any other rights or entitlements necessary to allow Developer to develop and operate the SCIG.

2.3.6. Notwithstanding any other provision of this Agreement, if, during a period of thirty six (36) months after the effective date of this Agreement, Developer determines that the Project is no longer viable as a result of the steps necessary to obtain all rights or properties to build or operate SCIG, achieve the Ultimate FEIR, reach final, binding, non-appealable completion of any litigation related to the Permit or this Agreement, relocation of holders of Third-Party Agreements, or reach resolution of all demands for any other payment, contribution, action or mitigation. If Developer exercises the right set forth in this Section 2.3.6, Developer shall pay to Harbor Department an amount equal to the aggregate rents due from sublicensees from the effective date of this Agreement to the date of termination, and Harbor Department shall refund to Developer the aggregate amount of all License Fees paid from the effective date of this Agreement to the date of termination.

3. The Premises, as of the effective date of this Agreement.

3.1. Changes to the Area of the Premises. The Parties may mutually agree to increase the area of the Premises following the effective date of this Agreement in manners consistent with the provisions of this Agreement. Upon such mutual agreement, Harbor Department shall revise Attachment 1 and transmit same to Developer. Upon such transmittal the revised Attachment 1 shall be deemed to supersede and replace the existing Attachment 1, without further action of Board or City Council.

3.2. Land not exceeding ten percent (10%) of the Premises may be permanently added to or deleted from the Premises by mutual written agreement of Executive Director and Developer subject to the conditions below. Following such addition or deletion, upon transmittal by Harbor Department of a revised Attachment 1 reflecting such addition or deletion, the Premises shall be deemed amended in accordance with such revised Attachment 1. Proposed changes to the Project which were not consistent with or assessed in the Ultimate FEIR may be subject to possible review, environmental assessment and approval by the Board and City Council, as required by the Los Angeles City Charter and Applicable Law, before changes to Premises affected by Project changes can be made.

(a) So long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor) or not temporary as determined by City in its sole reasonable discretion, then the Rent determined according to the provisions of Section 4 of Permit shall be increased or decreased pro rata to reflect any such addition or deletion;

(b) If permanent changes in the area of the Premises are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) of the originally designated area.

3.3. Nothing described as "property" on Attachment 4, when it is added to the Premises is for purposes of this Agreement or the Permit a facility modification or addition to the Premises nor will it require an amendment of either this Agreement or the Permit or further Board or City Council action, so long as the activities undertaken on such "property" are consistent with the March 7, 2013 FEIR or Ultimate FEIR. Obtaining, terminating, issuing and/or assigning any of the "rights" identified on Attachment 4 will not require a facility modification or addition to the Premises or an amendment of either this Agreement or the Permit, so long as the activities undertaken in connection therewith are consistent with the March 7, 2013 FEIR or Ultimate FEIR. All features and operations which are part of the Project in the March 7, 2013 FEIR or Ultimate FEIR are part of the New Improvements under Section 9 of this Agreement and under Section 8 of the Permit, and will not be deemed to be Alterations to the Project irrespective of the manner or timing of the submitted applications for the Chief Harbor Engineer's Permit for the features and operations which are part of the Project. Proposed changes to the Project which were not consistent with or assessed in the Ultimate

FEIR may be subject to possible review, environmental assessment and approval by the Board and City Council, as required by the Los Angeles City Charter and Applicable Law, before changes to Premises affected by Project changes can be made.

3.4. Known Environmental Condition of the Premises. City and Developer acknowledge and agree that the document attached hereto as Attachment 5 depicts, as of the effective date of this Agreement, the known environmental condition of the Premises ("Preliminary Site Characterization Report" and "Preliminary Site Characterization"). Developer bears no responsibility or liability as an owner, operator, generator or arranger or any other manner under Applicable Law for the environmental conditions identified in the Preliminary Site Characterization Report.

3.5. Existing Encumbrances; Third-Party Agreements and Rights of Way. City and Developer acknowledge and agree that as of the effective date of this Agreement, the Premises include areas covered by and subject to: (i) the Third-Party Agreements, copies of which are attached as Attachment 6, and (ii) the Rights of Way, copies of which are attached as Attachment 7. City represents and warrants that it has no actual knowledge that the documents attached hereto as Attachment 6 are not true, complete and accurate copies of all Third-Party Agreements and there are no other such agreements with third parties, and that the documents attached hereto as Attachment 7 are true, complete and accurate copies of all Rights of Way and there are no other such rights of way with third parties. City further represents and warrants that the Third-Party Agreements and Rights of Way are valid and binding on the respective permittees they identify. City further represents and warrants that the Third-Party Agreements and Rights of Way are without any rights of offset, counterclaim, waiver or unenforceability in any manner or part whatsoever, and that City has received no notice and is unaware of any such claims in connection with the Third-Party Agreements and Rights of Way. City further represents and warrants that it may terminate the access rights of Pacific Harbor Line, Inc. and other railroads to the Premises. City further represents and warrants that it possesses the rights to relocate the ROW Facilities and will relocate such ROW Facilities if the process otherwise specified in this Agreement does not result in such relocation in time to coordinate with Developer's construction schedule. Developer has had the opportunity to perform and, in fact, has performed due diligence and independent review regarding the Third-Party Agreements, Rights of Way and the Premises. Developer, based on such due diligence and independent review, has no actual knowledge that the documents attached as Attachment 6 are not true, complete and accurate copies of all Third-Party Agreements, and has no actual knowledge that the documents attached hereto as Attachment 7 are not true, correct complete and accurate copies of all Rights of Way.

3.6. Existing Improvements to Remain. Harbor Department hereby conveys to Developer all right, title and interest in any improvements existing on the Premises as of the effective date of the Agreement which it owns ("Existing

Improvements") such that Developer may demolish same in connection with construction of the SCIG, except as set forth on Attachment 8.

4. Grant of Temporary License. For purposes of the Developer Site Work only, City hereby grants to Developer, subject to the terms and conditions of this Agreement, a license which includes a grant from City to Developer of all possessory interests that may be granted with a license and a right of quiet enjoyment permissible under Applicable Law (the "License"): (i) to enter upon and use the Premises in connection with the Developer Site Work; (ii) to carry out the Developer Site Work upon the Premises; (iii) to use existing roadways, driveways and pedestrian ways located on the Premises for vehicular and pedestrian ingress and egress to and from the Premises; (iv) to dispose of or protect in place Existing Improvements as set forth in Section 3.3; and (v) any rights City or Harbor Department would have acting for itself to perform any work described on Attachment 4.

5. Access to the Premises. The only access to the Premises during the term of this Agreement shall be as specified in Sections 4, 5, 6 and 7.

   5.1. Delayed Developer Access to Portions of Premises. Due to the existence of the Third-Party Agreements, Developer's access to the Premises identified as "Third-Party Agreement Lands" on Attachment 1 shall occur after the effective date of this Agreement, as more specifically set forth in Section 7.1.

   5.2. Harbor Department Access to Premises. Should Harbor Department require access to the Premises during the term of this Agreement, such access shall be limited to the purposes outlined in the Permit and this Agreement. In the event of such access, City shall execute the BNSF Entry Document in the form attached hereto as Attachment 9.

   5.3. Third-Party Access to Premises. No third-party (which third-parties shall be deemed to include non-Harbor Department personnel of City) access to the Premises during the term of this Agreement will be allowed without such third-party both obtaining Developer's consent and executing Developer's then-current form of third-party entry agreement. City shall direct any third-parties desiring access to the Premises to seek consent from Developer and to obtain the right of entry form as described above.

6. City Site Work. Following the effective date of this Agreement, City shall perform the following tasks, which constitute the City Site Work.

   6.1. Notices to Holders of Third Party Agreements. Within three (3) days following receipt of written notice from Developer, issue written notices of non-renewal to the holders of the Third-Party Agreements identified in Attachment 6, in accordance with the terms and conditions of the Third Party Agreements, which notices shall include a demand that any such holders post all applicable bonds or other security in accordance with the terms of the applicable Third Party Agreement and seek consent to access the Premises from Developer and to obtain

the right of entry form as set forth more particularly in Section 5.3. In addition to the foregoing, should the Parties discover third-party holders of rights in the Premises other than those identified in Attachment 6 unknown as of the effective date of this Agreement, upon the Parties' written mutual agreement, such third-party holders of rights shall be added to Attachment 6. Such notices shall provide, among other things, instructions to (i) vacate at the conclusion of the applicable notice periods (unless, in each case, such third-party has executed a contract with Developer allowing it to remain), (ii) remediate in accordance with the applicable agreement. Developer and City shall agree as to the form and substance of the foregoing notices.

6.2. Notices to Holders of Rights of Way. Within three (3) days following receipt of written notice from Developer, issue written notice to the holders of the Rights of Way identified in Attachment 7 and the holders of any other easements or encumbrances on the Premises to relocate into the Designated Utility Installation, in accordance with the terms and conditions of those holders' applicable right of way or other agreement, which notices shall include a demand that any such holders post all applicable bonds or other security in accordance with the terms of the Rights of Way and seek consent to access the Premises from Developer and to obtain the right of entry form as set forth more particularly in Section 5.3. In addition to the foregoing, should the Parties discover rights of way other than those identified in Attachment 7 unknown as of the effective date of this Agreement, upon the Parties' written mutual agreement, such rights of way shall be added to Attachment 7. Such notices shall provide, among other things, instructions to (i) relocate at the conclusion of the applicable notice periods (unless, in each case, such right of way holder has executed a contract with Developer allowing it to remain), (ii) remediate in accordance with the applicable right of way. Developer and City shall agree as to the form and substance of the foregoing notices.

6.3. Relocations of ROW Facilities. Utilize best efforts to cause relocation of those ROW Facilities which are not mutually agreed by City and Developer to be protected in place into the Designated Utility Installation in such time to coordinate with Developer's development of the Project, including without limitation enforcing City's rights and remedies under the Rights of Way, unless other accommodations are made by Developer and the holders of such Rights of Way. Relocation and/or disposal of facilities in the nature of a ROW Facility but without a Right of Way that may be encountered shall be handled as follows: (a) active facilities shall be treated as a Right of Way; and (b) inactive or abandoned facilities, or rail, shall be relocated, disposed of or left in place at Developer's discretion and sole cost and expense. Any contamination arising under this Section 6.3 shall be handled pursuant to Sections 6.4 and 7.4.

6.4. City Remediation of Premises to Set Interim Baseline Condition. City shall remediate the Premises to set the condition which shall be known as the "Interim Baseline Condition," as set forth below. Should the completion of such remediation extend beyond the first (1st) anniversary of the effective date of this

Agreement, the License Fee shall be abated proportionally as to the area of the Premises on which such remediation is ongoing. In addition to the foregoing, should a Governmental Authority issue an order or directive that materially interferes with Developer's ability to undertake the Developer Site Work, Developer's payment to City of the License Fee for the portion of the Premises so affected shall be abated for the period of time in which such order or directive is in place, and, if such delay prevents Developer from undertaking the Developer Site Work, the running of the term of this Agreement described in Section 2.1 shall be tolled in an amount equal to the length of such delay. Should the term of this Agreement be tolled as hereinabove described, the term of the Permit shall be adjusted if necessary such that the aggregate of the terms of this Agreement and the Permit shall not exceed fifty (50) years in length.

6.4.1. City shall remediate or cause the remediation of the Premises to set the Interim Baseline Condition. Developer, at its sole cost and expense, may perform additional sampling (including split samples) and analysis to support establishment of the Interim Baseline Condition. City shall cause the generation of a report depicting the environmental condition of the Premises immediately following such remediation, which condition shall be known as the "Interim Baseline" and which report shall be known as the "Interim Baseline Report." Should City's performance of the tasks set forth in this Section 6.4.1 extend beyond the first (1^{st}) anniversary of the effective date of this Agreement and materially delay Developer's commencement of the Developer Site Work, the running of the term of this Agreement described in Section 2.1shall be tolled in an amount equal to the length of such delay. Should the term of this Agreement be tolled as hereinabove described, the term of the Permit shall be adjusted if necessary such that the aggregate of the terms of this Agreement and the Permit shall not exceed fifty (50) years in length.

6.4.2. Upon completion and transmittal by City to Developer, the Interim Baseline Report shall be deemed to be incorporated into the terms of this Agreement and the Permit as Attachment 11. Developer bears no responsibility or liability as an owner, operator, generator or arranger or any other manner under Applicable Law for any Interim Baseline Condition. City shall retain one hundred percent (100%) of any monetary compensation recovered from any third-parties responsible for the Interim Baseline Condition.

6.4.3. If any remediation undertaken under this Section 6.4 requires the offsite disposal of waste materials, as between City and Developer, City shall retain all responsibility and liability as the owner and generator of the waste and shall select both the means and relocation site for the disposal of such materials, and "City of Los Angeles" shall be identified and appear on any manifest document as the generator of such material.

6.5. Attachment 4 Matters. Harbor Department acknowledges that Developer requires property or other rights or entitlements on real property owned or controlled by Harbor Department (as either the sole owner or owner of an undivided interest) as of the effective date of this Agreement, as identified on Attachment 4, which real property is necessary to construct SCIG as described in the Ultimate FEIR. Harbor Department shall promptly add such real property to the Premises following the effective date of the Agreement and shall promptly obtain, terminate, issue or assign to Developer (as applicable as specified on Attachment 4) all rights so identified on Attachment 4. Harbor Department and Developer acknowledge that, in addition to the aforementioned real property, rights and entitlements, third-parties possess property or operational rights on lands currently intended for use in the SCIG. Harbor Department shall utilize its best efforts to acquire real property or to obtain, terminate, issue or assign (as applicable as described on Attachment 4) all such rights as described in Attachment 4. City is not required to breach nor allow Developer to breach any provisions of other existing contracts to which it is a party in connection with any Attachment 4 item in order to fulfill its obligations under this provision.

6.6. ACTA Maintenance Yard Relocation. City shall promptly secure or provide a relocation site for all ACTA facilities and uses on the ACTA Triangle and relocate ACTA to same within thirty-six (36) months following the effective date of this Agreement.

7. Developer Site Work. Following the effective date of this Agreement, Developer shall perform the following tasks, which constitute the Developer Site Work:

7.1. Lands Covered by Third Party Agreements. Following receipt of City's notice required by Section 6.1 and the expiration of any notice periods required by the Third-Party Agreements (during which such notice periods Developer shall not disturb any right of quiet enjoyment bestowed by the Third-Party Agreements unless otherwise agreed to between Developer and the holder of any Third-Party Agreement), Developer shall obtain possession of the lands covered by the Third-Party Agreements in compliance with Applicable Law, and clear such lands such that they are in a condition to allow either remediation or construction, as described herein.

7.2. Relocation of Rights of Way into Designated Utility Installation. Following obtaining possession of the lands covered by the Third-Party Agreements as set forth in Section 7.1, Developer shall construct the Designated Utility Installation and, should City's exercise of best efforts pursuant to Section 6.3 not result in relocation of the ROW Facilities into the Designated Utility Installation, relocate the Rights of Way into the Designated Utility Installation. Any self-help rights in City's favor in any Rights of Way shall be assigned to Developer to the extent they are assignable, to effectuate such relocations, if any, by Developer. Any costs BNSF may incur to effectuate such relocation against holders of Rights of

Way that refuse to relocate shall be reimbursable and reimbursed by City. Such reimbursements are in addition to and not included in the "Developer Credits" referenced in Section 8.

7.3. Design and Construction of SCIG. Developer's Site Work shall include the design and construction of the SCIG to Completion as more fully described in Section 9. Any financing necessary for the design or construction of the SCIG shall be the sole responsibility of Developer and at Developer's sole cost and expense.

7.4. Necessary Remediation and Remediation Reimbursement. City and Developer acknowledge and agree that Developer's Site Work or other third party or City activity as permitted by this Agreement may uncover environmental conditions in addition to those previously known that require remediation based on the Interim Baseline Report, notwithstanding City's best reasonable efforts in performing the obligations of Section 6. In such an event, Developer shall (a) provide written notice to City together with a remediation plan and cost estimate to effectuate remediation, and (b) upon City's written approval to proceed, which approval shall not be unreasonably withheld, conditioned or delayed beyond thirty (30) days following City's receipt of such written notice, remediation plan and cost estimate, remediate or cause the remediation of such environmental conditions to levels established in the Interim Baseline Report, unless otherwise directed by a Governmental Authority with jurisdiction over the Premises. City shall reimburse Developer therefor in an amount equal to its actual and reasonable costs for all remediation under this Section 7.4. Such reimbursements are in addition to and not included in "Developer Credits" identified in Section 8. Upon Completion, at City's sole cost and expense, Developer shall cause the generation of a report depicting the environmental condition of the Premises which shall incorporate information generated from the Preliminary Site Characterization Report, Interim Baseline Report and any additional remediation and sampling and analysis performed by City and Developer under this Section 7.4, which condition shall be deemed to be the "Final Baseline Condition" and which report shall be known as the "Final Baseline Report." City, at its sole cost and expense, may supplement the Final Baseline Report with sampling and analysis. The Final Baseline Report shall be (a) prepared by Developer and (b) reviewed and approved by City within sixty (60) days following City's receipt of same. Developer bears no responsibility or liability as an owner, operator, generator or arranger or any other manner under Applicable Law for any conditions noted in the Final Baseline Report. If any remediation undertaken under Section 7.4 requires the offsite disposal of waste materials, as between City and Developer, City shall retain all responsibility and liability as the owner and generator of the waste and shall select both the means and relocation site for the disposal of such materials, and "City of Los Angeles" shall be identified and appear on any manifest document as the generator of such material.

7.5. Releases of Environmentally Regulated Material. If, during the term of this Agreement, Developer or third-parties acting for or on behalf of Developer

release or cause the release of Environmentally Regulated Material on the Premises (including the soil, groundwater and sediment), Developer shall remediate or cause the remediation of such releases such that the affected Premises are left (a) at levels established in the Interim Baseline Report or (b) in an environmental condition that fully complies with any directive or order of the Governmental Authority(ies) that has/have assumed jurisdiction, if any, whichever of the two is stricter, and free of encumbrances, such as deed or land use restrictions, except for those that may be imposed as a result of the presence of Environmentally Regulated Material.

8. Developer Credit for Performance of Developer Site Work. In consideration of Developer's performance of portions of the Developer Site Work defined above in Sections 7.1 and 7.3, and the construction of the Designated Utility Installation, City shall issue Developer credits ("Developer Credits") against its obligation to pay the License Fee pursuant to Section 11 in an amount equal to the actual costs Developer spends to perform such Developer Site Work, excluding legal fees, and financing fees, and acquisition costs for lands separate from the Premises, but including among other things permitting fees and disposal fees ("Actual Credit Costs"), which Developer Credit shall be capped at the total amount of License Fees due and owing from Developer in the first two (2) years of the term of this Agreement, which amount shall be equal to the sum of (a) Six Million, Two Hundred and Sixty Six Thousand, One Hundred and Six Dollars ($6,266,106) and (b) Six Million, Two Hundred and Sixty Six Thousand, One Hundred and Six Dollars ($6,266,106) as adjusted by CPI pursuant to Section 11. Developer Credits shall be earned and furnished only in connection with the performance of Developer Site Work. Developer shall be deemed to have earned Developer Credits as it incurs Actual Credit Costs, subject to City's right to approve, in its reasonable discretion, within thirty (30) days, the performance of the elements of the Developer Site Work to which such Developer Credits are asserted to apply. Because they are dealt with separately elsewhere, remediation of environmental conditions as set forth in Section 7.4 and relocation of ROW Facilities as set forth in Section 7.2 are not Actual Credit Costs and are reimbursements but not Developer Credits.

   8.1. Documentation to Support Issuance of Credit. In connection with such credit, Developer shall furnish or caused to be furnished to City within ninety (90) days after the close of each year of the term of this Agreement (a) a written statement of the annual Actual Credit Costs of Developer which is signed and certified to be true and correct by Developer's duly authorized officer or by Developer's certified public accountant and which shows in reasonable detail the elements and amount of Actual Credit Costs during such year, together with the calculation(s) used by Developer to determine the amount of Actual Credit Costs and (b) true and correct copies of all records, invoices, receipts and other documentation on which Developer bases the amount of credit taken. For a period of five (5) years following the submittal of its certified annual statement of Actual Credit Costs for each year of the term of this Agreement, Developer must keep and maintain full and accurate accounting books and records of Actual Credit Costs in accordance with generally accepted accounting principles consistently applied. The accounting books and records kept and maintained by Developer for audit

purposes must include all records, receipts, journals, ledgers and documents reasonably necessary to enable City or its auditors to perform a complete and accurate audit of Actual Credit Costs in accordance with generally accepted accounting principles. In addition, City, at any time within five (5) years after receipt of any certified annual statement for each year of this term of this Agreement and on not less than thirty (30) days' prior written notice to Developer, may cause an audit to be made of Actual Credit Costs and all of Developer's records and accounting books necessary (in City's sole reasonable discretion) to audit such items. Developer shall make such books and records available for the audit at the Premises. If such audit discloses an overpayment by City, Developer shall immediately pay City the amount of such overpayment with interest (the amount of which shall be determined by Tariff Item No. 270) which shall accrue from the date the payment should have been made through and including the date of payment.

9. Design and Construction of SCIG. Design, and construction of the SCIG, (including without limitation demolition (or protection in place) of the Existing Improvements, construction of the Designated Utility Installation, and construction of the New Improvements (which New Improvements are identified on Attachment 13), grading, paving, drainage (including SUSMP), striping, fencing, fire-protection systems, lighting, signalization, new utilities, security systems and buildings) by Developer or its Representatives upon any part of the Premises shall be performed (and any construction license shall be exercised): (a) at the sole cost and expense of Developer; (b) in a good and workmanlike manner; (c) pursuant to and in compliance with a Chief Harbor Engineer's General Permit; and (d) in conformity with (i) this Agreement, (ii) standard industry construction practices, (iii) a construction management plan to be mutually agreed upon by the parties after the effective date of this Agreement, and (iv) Applicable Laws. Developer shall complete such design and construction as soon as reasonably practicable and shall prosecute the same diligently to Completion, and shall comply with the requirements of the Ultimate FEIR, and adopted project conditions, if any. Such design and construction shall not constitute a facility modification. Developer shall submit and City shall provide prompt reasonable written approval of plans and specifications prepared by or on behalf of Developer in connection with such construction.

9.1. The Chief Harbor Engineer shall have the right to require reasonable changes with regard to code compliance and safety to the drawings, plans and specifications Developer submits for work that requires a Chief Harbor Engineer's permit. If Chief Harbor Engineer orders such a change and Developer believes that such a change will have any detrimental effect on the structural integrity of the works, project or improvements covered thereby, or increase any hazard to life or property, Developer shall immediately notify Chief Harbor Engineer. If Developer fails to provide such notification, the drawings, plans and specifications shall be treated for all purposes as if they had been originally prepared by Developer, as changed. Chief Harbor Engineer's approval of Developer's submittal, if any, will be reflected by issuance of a Chief Harbor Engineer's permit.

9.2. Developer is the owner of all New Improvements. Except as specifically provided for herein, this Agreement is not intended to and shall not create rights in entities other than Developer to use the New Improvements or the Premises. The Parties acknowledge and agree that neither the New Improvements nor the Premises shall become a "Port Facility," "Tracks," "Track Support Structures," "Port Rail Facility," "Replacement Railyard," or a "railyard of substantially similar utility" under any other existing or future agreement to which City or any other entity controlled in whole or part by City is or becomes a party including but not limited to the Alameda Corridor Use and Operating Agreement (October 12, 1999) and the Permit to Use Tracks Agreement (December 1, 1997), and the San Pedro Bay Harbor Rail Operating Permit (December 1, 1997) nor become part of any other class or category of improvements to which any party other than Developer shall have access or use unless otherwise mutually agreed to in writing by Developer and City. City also agrees that the Premises are not located in a "Port Area" as that term is used in the Alameda Corridor Use and Operating Agreement (October 12, 1999).

9.3. As-Built Drawings. Developer will provide City as-built drawings covering all New Improvements upon Completion.

9.4. Facilitation by Harbor Department. To the extent of its interests as the owner of the Premises, unless inconsistent with or contrary to the terms and provisions of this Agreement, upon Developer's request, Harbor Department, shall, without cost to City, facilitate applications for building permits, demolition permits, alteration permits, appropriate consents, authorizations or approvals, zoning, rezoning or use approvals, amendments and variances relating to (i) the Premises, (ii) the construction, alteration, maintenance, removal or demolition of any improvements existing on the Premises on the effective date of this Agreement, or the New Improvements; and (iii) the construction or development of the Premises or SCIG in manners consistent with the Ultimate FEIR, and such other instruments as Developer may from time to time reasonably request to enable Developer to develop, improve and construct improvements on the Premises or related to SCIG during the term of this Agreement, consistent with the grants, standards, restrictions and reservations set forth in this Agreement, Applicable Laws or any applicable agreement, provided each of the foregoing is in reasonable and customary form and does not cause the Fee Estate to be encumbered as security for any obligation and does not expose the Fee Estate to any risk of forfeiture during the term of this Agreement, or the term of the Permit. Harbor Department shall use its best effort to speed the issuance of permits, variances, approvals, consents, authorizations, changes, amendments, and instruments over which it has jurisdiction, and shall utilize reasonable efforts to effectuate the issuance of any of the foregoing from other divisions of City or as to which Harbor Department or City is a co-owner or owner. City agrees not to oppose or object to any applications filed or requests for permits, consents, authorizations or approvals (including but not limited to applications for building permits, demolition permits, alteration permits, appropriate consents, authorizations or approvals, zoning, rezoning or use approvals, amendments and variances) by Developer with any

Governmental Authority or other public agency under California Government Code Section 6500 or any private entity in connection with development, operation or alteration of any improvements located on the Premises or related to the construction or development of SCIG which are consistent with the standards set forth in this Agreement, the Permit and Applicable Laws. Nothing in this Section 9.4 shall be construed to limit City's police powers or discretionary review and approval processes in its Governmental Capacity under Applicable Law.

9.5. Liens: Stop Notices. Developer shall not permit any mechanics' or material supplier's liens or other liens or stop notices to stand against any portion of the Premises for labor, material or services furnished to or on behalf of Developer. Developer shall be solely responsible for and shall promptly pay and discharge or bond over any and all liens arising out of the Developer Site Work done, or suffered or permitted to be done, by Developer or its Representatives in the Premises as part of the Developer Site Work, within thirty (30) days after receiving notice of filing of any such lien (but in any case within fifteen (15) days after receipt of notice of commencement of foreclosure proceedings). City is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent attachment of liens or filing of stop notices with respect to the Premises; provided, however, that the failure of City to take any such action shall not relieve Developer of any obligation or liability under this or any other section hereof. Developer shall have the right to contest the validity or amount of any such lien or stop notice, provided that such contest is made diligently and in good faith, and, with respect to each, Developer either furnishes security reasonably acceptable to the City to ensure that the lien, plus applicable costs and charges, will be paid if the contest is unsuccessful, or secures a bond sufficient to release such lien.

10. Cooperation; Release of Claims. City and Developer agree to work cooperatively with one another, to enable completion, as applicable, of the City Site Work and the Developer Site Work. Except as specifically set forth to the contrary in this Agreement, Developer and City intend to bear all of their own costs in developing the SCIG. City and Developer desire to, and do fully and irrevocably release any claims against one another for such costs one might have against the other arising from or related to the SCIG which arise prior to the effective date of this Agreement, other than those based on bad faith or fraud.

11. License Fee. The City shall license the Premises to Developer for the term and on the terms and conditions set forth herein as follows: (a) commencing on the effective date of this Agreement, an annual License Fee of Six Million, Two Hundred and Sixty Six Thousand, One Hundred and Six Dollars ($6,226,106.00); and (b) commencing at the beginning of the eighth (8^{th}) year of the term of this Agreement, an annual License Fee of Seven Million Eight Hundred and Thirty Two Thousand, Six Hundred and Thirty Three Dollars ($7,832,633). The License Fee shall be subject to annual adjustments pursuant to the CPI-U in the manner as set forth in Section 4 of the Permit. For

accounting purposes, the CPI adjustment shall be rounded to the nearest thousandth. Such License Fee, which may be reduced by Developer Credits, shall be due and payable after the conclusion of each year of the term of this Agreement (in pro rata amounts for any periods less than a full year) within thirty (30) days after Harbor Department confirms under Section 8 that the relevant portion of the Developer Site Work is complete.

11.1. Tolling of Payment of License Fee. Notwithstanding the foregoing provisions of Section 11, for any period of the term of this Agreement during which an appeal, litigation or administrative agency proceeding relating to the March 7, 2013 FEIR, the Permit or this Agreement is pending, License Fees otherwise due and owing from Developer during such period shall not be paid, but the amount attributable to such period of litigation or appeal of the March 7, 2013 FEIR, the Permit or this Agreement shall be tolled and amortized, and payable over the remaining term of the Permit beginning after issuance of a final, binding, non-appealable order from a court of competent jurisdiction concluding all such litigation, or settlement.

11.2. License Fee Adjustment. Notwithstanding the foregoing provisions of Section 11, the License Fee will be abated proportionally should City, holders of the Rights of Way, or parties required by City to be allowed entry to the Premises materially interfere with Developer's ability to enjoy the grant of License to Developer under Section 4. The License Fee shall be adjusted to reflect any additions to or deletions of the Premises in an amount proportionate to the relationship of the area added or subtracted bears to the total area of the Premises on the effective date of this Agreement. Additionally, should holders of the Third-Party Agreements fail to vacate or enter into a contract with Developer allowing them to remain after their applicable notice periods, the License Fee shall be abated proportionately. Additionally, the License Fee may be subject to Developer Credits as set forth in Section 8.

12. Indemnity and Insurance. Developer's indemnity and insurance obligations shall be as set forth in Section 14 of the Permit, with the exception that references to "Tenant" in that Section 14 shall be to "Developer" herein.

13. Assignment. The rights and obligations of the Parties relative to assignments and transfers shall be as set for in Section 15 of the Permit, with the exception that references to "Tenant" in that Section 15 shall be to "Developer" herein.

14. Damage or Destruction. In the event that equipment or facilities owned by Developer on the Premises (including without limitation the New Improvements) are damaged or destroyed by fire or other cause, Developer shall either, at its option, (a) raze and clear any such damaged items in order to maintain the Premises in a clean and safe condition, in accordance with Applicable Law, or (b) repair, restore, or reconstruct the damaged items to the extent necessary to complete Developer Site Work.

15. Taxes and Fees. Developer shall be responsible for the payment of any property taxes, ad valorem taxes, and possessory interest taxes, which are attributable to the term of this Agreement and are imposed upon any and all of the temporary facilities owned by Developer, its agents, employees or contractors on the Premises.

16. Default.

16.1. Developer Default. It shall be an "Event of Default" by Developer should Developer (a) use or allow the Premises or any rights granted to it under this Agreement to be used for purposes not herein permitted or (b) fail to comply with any other term, provision, agreement or requirement of this Agreement, and, in each case, fail to cure such default within the time set forth below. Should an Event of Default by Developer occur, the City shall provide written notice to Developer which shall specify the non-permitted uses of the Premises or other Events of Default by Developer. Upon delivery of the notice specifying Developer's Event(s) of Default, Developer shall have such time as is reasonably necessary to cure such Event of Default so long as Developer commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of writing to City acknowledging receipt of Notice and setting forth a plan to cure such Event of Default will constitute commencement of the cure. If Developer submits a letter detailing why Developer believes the claimed Event of Default is not an Event of Default, the Parties shall meet and confer within thirty (30) days after the date of transmittal of such letter regarding whether an Events of Default has occurred. If the Parties cannot agree as to whether an Event of Default has occurred within thirty (30) days after such meet and confer, or after additional time as is reasonably necessary, as to whether an Event of Default has occurred, such dispute shall be submitted for final and binding arbitration before one arbitrator appointed by the American Arbitration Association ("AAA") at Los Angeles, California acting pursuant to AAA's Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. Once any determination that an Event of Default has occurred is final either by agreement or arbitration, such determination shall be deemed City's notice to Developer as specified in this provision declaring a default. Developer shall have such time as is reasonably necessary to cure such Event of Default so long as Developer commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of a writing to City acknowledging receipt of Notice and setting forth a plan to cure such Event of Default will constitute commencement of the cure.

16.2. City Default. It shall be an "Event of Default" by the City should the City fail to comply with any term, provision, agreement or requirement of this Agreement, and, in each case, fail to cure such default within the time set forth below. Should an Event of Default by the City occur, Developer shall provide written notice to the City which shall specify the Events of Default by the City. Upon delivery of the notice specifying the City's Event(s) of Default, the City shall have thirty (30) days from the date of its receipt of such notice to cure the

default, provided that if such Event of Default cannot reasonably be cured within such thirty (30) day period, then the City shall have such time as is reasonably necessary to cure such Event of Default so long as the City commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Should any default result in a life threatening condition, the City shall employ appropriate and timely measures to promptly cure the default.

17. Notification by Developer. Developer agrees to promptly notify the City of the occurrence of any event on the Premises caused by Developer or its agents, contractors, representatives or employees that has resulted in injury or death to any person, damage to property and/or the creation of any hazardous condition. In addition, Developer shall provide City with a description of the actions it has taken or will take to avoid further injury or death and/or to eliminate the hazardous condition(s).

18. Incorporation of Permit Provisions. The terms and conditions of Sections 21 (Recordkeeping, Inspection and Audit), 22 (Condemnation), 24 (Signs), 25 (Notices), and 26 (with the exceptions of Sections 26.1, 26.8 and 26.15.3) of the Permit are incorporated herein by this reference as if fully set forth, with the following exceptions: (a) references to "Tenant" in the Permit shall be to "Developer" in provisions incorporated herein by this reference; (b) references to "Permit" in the Permit shall be to "Agreement" in provisions incorporated herein by this reference; (c) references to "Exhibit" in the Permit shall be to "Attachment" in provisions incorporated herein by this reference.

19. Preemption. Nothing contained in this Agreement is intended to or shall operate to alter the laws regarding preemption, or be deemed a waiver of preemption.

20. Force Majeure. Except should Developer make an election to exercise its rights under Section 2.3, but otherwise notwithstanding anything to the contrary contained in this Agreement, any prevention, delay or stoppage due to strikes; lockouts; labor disputes or shortages; acts of God; inability to obtain, labor, materials or reasonable substitutes therefor; governmental or regulatory actions; civil commotions; fire or other casualty; transportation or delivery delays; blocked access rights; acts of a public enemy; war; terrorism; severe weather; or earthquake and other causes beyond the reasonable control of the party obligated to perform (each, an "Event of Force Majeure"), shall, except with regard to either party's obligation to reimburse the other party that has already accrued, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by an Event of Force Majeure, so long as the non-performing party diligently attempts to cure the non-performance caused by the Event of Force Majeure. In the event of the happening of any of such contingencies, the Party delayed by an Event of Force Majeure shall immediately give the other Party written notice of such contingency, specifying the cause for delay or failure, and such notice from the Party delayed shall be prima facie evidence that the delay resulting from the causes specified in the notice is excusable. The Party delayed by an Event of Force Majeure shall use reasonable diligence to

remove the cause of delay, and if and when the contingency which delayed or prevented the performance of a Party shall cease or be removed, the Party delayed shall notify the other Party immediately, and the delayed Party shall recommence its performance of the terms, covenants and conditions of this Agreement. Notwithstanding the foregoing, the aggregate of the terms of this Agreement and the Permit shall not exceed fifty (50) years in length regardless of the existence of any Event of Force Majeure. Should this Section 20 be invoked, the term of the Permit shall be adjusted as necessary in accordance with the foregoing.

21. Sublicenses. Developer has the right to enter into sublicenses as to all or any portion of the Premises. Should Developer exercise its termination rights as set forth in Section 2.3.1, then, for any such sublicenses in effect as of the date of termination, any fees due to Developer from such sublicensee(s) will be treated in the same manner as Section 2.3.1 provides for rents due under any Third Party Agreements in effect as of the date of termination.

22. Tolling. Should either Party wish to toll the running of a time period contemplated by this Agreement, such Party shall provide written notice to the other, following which the Party receiving such notice shall provide written confirmation, upon which confirmation, which shall not be unreasonably withheld, conditioned or delayed, the time period will be deemed tolled.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

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

Dated: _____

By _____
Executive Director

Attest: _____
Board Secretary

BNSF RAILWAY CO.

Dated: _____

By _____
_____
(Print/type Name and Title)

Attest: _____
_____
(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 20_____
CARMEN A. TRUTANICH, City Attorney
Janna Sidley, General Counsel

By _____
Steven Y. Otera, Deputy

EXHIBIT A – GLOSSARY

Unless the context shall otherwise require, the following terms shall have the following respective meanings when used in the Permit or Site Preparation and Access Agreement to which this Glossary is attached. The following definitions are equally applicable both to the singular and plural forms and the feminine, masculine and neuter forms of the terms defined. Any agreement defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof entered into from time to time in compliance with the terms of the Permit or Site Preparation and Access Agreement.

"ACTA Triangle" means the property described as such on **Attachment 4** of the Site Preparation and Access Agreement.

"Actual Credit Costs" means the credit amount as defined in Section 8 of the Site Preparation and Access Agreement.

"Additional Rent" is as defined in Section 4.4 of the Permit.

"Adjusted Land Rent" means the payments due to City from Tenant as defined in Section 4.2.2.2 of the Permit.

"Alteration" or "Alterations" means improvements, alterations, additions or changes to the Premises, after Completion, including but not limited to the construction of works or improvements or the changing of the grade of the Premises, except as otherwise specified in the Site Preparation and Access Agreement or the Permit.

"Applicable Law" or "Applicable Laws" shall mean any and all non-preempted federal, state, county or governmental agency laws, statutes, ordinances, standards, codes (including, without limitation, all building codes) rules, Tariffs, requirements, or orders in effect now or hereafter affecting the development, construction, operation and maintenance of SCIG, with which, in the case of each Party, such Party otherwise be required to comply without the existence of the Site Preparation and Access Agreement or the Permit. Applicable Laws shall include, but not be limited to Environmental Laws.

"Base Rent" means the payments due to City from Tenant as defined in Section 4 of the Permit and includes Land Rent and Container Charges.

"BNSF Entry Document" means the right of entry document prepared by Tenant, the form of which is attached to the Permit as **Exhibit "D" ""** and to the Site Preparation and Access Agreement as **Attachment 9**, to be signed by Harbor Department, as provided in the Site Preparation and Access Agreement or Permit, or such revised form as Tenant from time to time may provide to Harbor Department, upon which provision

such as **Exhibit "D"** and **Attachment 9** shall be deemed to be superseded and replaced by the revised form.

"Board" means the Board of Harbor Commissioners of the Harbor Department of the City.

"CEQA" means the California Environmental Quality Act.

"Chief Harbor Engineer" means Chief Harbor Engineer, Engineering Division of the Harbor Department, or successor designations should that title be renamed or redesignated during the Term.

"City" means the City of Los Angeles.

"City-Associated" is as defined in Section 17.1 of the Permit.

"City's Costs" means, in City's reasonable discretion, the cost of maintenance, repair, or upgrade or restoration to cure a failure of Tenant to perform an obligation under the Permit, including costs for labor, materials, services, equipment usage, and other indirect expenses directly arising from the cure of a failure of Tenant to perform an obligation under the Permit.

"City Council" means the Council of the City of Los Angeles, the legislative body of the City pursuant to Section 200 of the Charter of the City.

"City's Determination Due Date" is as defined in Section 4.2.2.2.2 of the Permit.

"City Site Work" is as defined in Section 6 of the Site Preparation and Access Agreement.

"Comparable Facilities" means other first-class intermodal yards of similar size and configuration owned or operated by BNSF Railway Company.

"Complete", "Completed" or "Completion" means the state of being sufficiently constructed so as to allow the Permitted Uses. The date of Completion shall be the date on which Harbor Department acting in its Proprietary Capacity issues a written acknowledgement that the New Improvements have reached Completion. Such written acknowledgement shall only be made following written notice from Developer that, in Developer's opinion, the New Improvements are sufficiently constructed so as to allow the Permitted Uses, and may not be unreasonably withheld, conditioned, or delayed.

"Condemnation" means the taking through acquisition or damage of all or part of the Premises or New Improvements by a Governmental Authority having the power of eminent domain.

"Container" means a highway trailer or intermodal container of any dimension.

"Container Charge" means the amount per Movement that Tenant shall pay City as Rent for the use of the Premises.

"CPI" means the Consumer Price Index for All Items, All Urban Consumers ("CPI – U") for the Los Angeles–Riverside and Orange Counties, as published by the U.S. Department of Labor, Bureau of Labor Statistics as series CUURA421SAO for July of each year. If the publication of said index is discontinued, then "CPI" shall mean a successor index selected by the Harbor Department in its sole but reasonable discretion shall be substituted.

"Designated Utility Installation" means an underground utility corridor traversing the Premises designed and constructed by Tenant which will house the ROW Facilities following their relocation from other locations on the Premises.

"Developer" means BNSF Railway Company, the Developer under the Site Preparation and Access Agreement or its successors or assigns.

"Developer Option" shall be as defined in Section 2.2 of the Site Preparation and Access Agreement.

"Developer Site Work" is as defined in Section 7 of the Site Preparation and Access Agreement.

"Effective Date" is as defined in Section 3.2 of the Permit and is not intended and shall not refer to the effective date of the Site Preparation and Access Agreement.

"Environmental Compliance Program" means the Environmental Compliance Program attached to the Permit as **Exhibit "J."**

"Environmental Laws" means the environmental laws and implementing regulations which are a subset of the Applicable Laws and which are applicable to the Premises and Developer's or Tenant's use and occupancy thereof, in their form as of the Effective Date or as subsequently amended, or as may be promulgated during the term of the Site Preparation and Access Agreement, as well as the Permit or any holdover. Such Environmental Laws include but are not limited to:

(a) CERCLA and its implementing regulations;

(b) RCRA and its implementing regulations;

(c) The federal Clean Water Act (33 U.S.C. Sections 1251–1376, et seq.) and its implementing regulations;

(d) The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations;

(e) The federal Clean Air Act (42 U.S.C. Sections 7401-7601) and it's implementing regulations;

(f) The California Clean Air Act of 1988 and its implementing regulations;

(g) The state Lewis Air Quality Act of 1976 and its implementing regulations; and

(h) Any other non-preempted federal, state, or local law, regulation, ordinance or requirement now or hereinafter in effect which concerns Environmentally Regulated Material, and Developer's and Tenant's use and occupancy of the Premises, with which, in the case of each Party, such Party would otherwise would be required to comply without the existence of the Site Preparation and Access Agreement or the Permit.

"Environmentally Regulated Material" means any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local or governmental authority having jurisdiction over the Premises. Environmentally Regulated Material includes but is not limited to:

(a) Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. Sections 9601-9675) in its present or successor form;

(b) "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. Sections 6901-6992k) in its present or successor form;

(c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous or toxic waste, substance or material, now or hereinafter in effect);

(d) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 U.S.C. Sections 2011-2297g-4 in its present or successor form;

(e) Asbestos in any form or condition;

(f) Polychlorinated biphenyls ("PCBs") and substances or compound containing PCBs;

(g) Petroleum products; and

“Event of Default” is as defined in Section 17.2 of the Site Preparation and Access Agreement and is not intended to and shall not apply to the Permit.

“Event of Force Majeure” is as defined in Section 18 of the Permit and Section 20 of the Site Preparation and Access Agreement.

“Existing Improvements” means improvements existing on the Premises as of the effective date of the Site Preparation and Access Agreement owned by City.

“Expiration Date” means the date defined in Section 3.1 of the Permit and is not intended to and shall not apply to the Site Preparation and Access Agreement.

“Expiration Remediation Action Plan” is as defined in Section 12.2.2 of the Permit.

“Fee Estate” means fee title to the land comprising the Premises, upon which the New Improvements will be constructed, operated and maintained.

“Final Baseline Condition” or “Final Baseline Conditions” mean the environmental condition of the Premises following Completion, which incorporates information generated from the Preliminary Site Characterization Report, Interim Baseline Report and any additional remediation and sampling and analysis performed by City and Developer under Section 7.4 of the Site Preparation and Access Agreement.

“Final Baseline Report” means that report depicting the Final Baseline Condition.

“Five-Year Adjusted Period” is as defined in Section 4.2.2.2.1 of the Permit.

“Governmental Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the City, of the United States of America, including any successor agency, with jurisdiction over the Premises.

“Governmental Capacity” means City acting in its authorized capacity as the City of Los Angeles, a municipal corporation as set forth in Section 26 of the Permit or other Governmental Agency acting in its authorized capacity.

“Harbor Department” means the Harbor Department of the City.

“Harbor District” is as defined in Section 651(a) of City’s Charter or in any successor provision of City’s Charter.

“Chief Harbor Engineer’s General Permit” means the permit issued by the Chief Harbor Engineer to undertake works or improvements in the Harbor District.

“Interim Baseline Report” and “Interim Baseline Condition” are as defined in Section 6.4 of the Site Preparation and Access Agreement.

“Labor Disturbance” is as defined in Section 4.5.4 of the Permit.

“Land Rent” means the payments due to City by Tenant as further defined in Section 4.2 of the Permit.

"Leasehold Estate" means Tenant's leasehold estate arising under the Permit, upon and subject to all the terms and conditions of the Permit, or any part of such leasehold estate.

“Leasehold Mortgage” means any mortgage, deed of trust, deed to secure debt, assignment, security interest, pledge, financing statement, bonds or any other instrument(s) or agreement(s) intended to grant security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate, as entered into, renewed, modified, consolidated, amended, extended or assigned from time to time during the Term of the Permit.

“Leasehold Mortgagee” means a financial institution that is the holder of a Leasehold Mortgage on Tenant’s interests in the Leasehold Estate.

“License” is as defined in Section 4 of the Site Preparation and Access Agreement.

“License Fee” means that license fee required to be paid by Developer to City by Section 11 of the Site Preparation and Access Agreement.

“Market Rent” means the land value described in **Exhibit “E”** to the Permit.

“March 7, 2013 FEIR” means the environmental impact report for the SCIG certified pursuant to CEQA on March 7, 2013, including without limitation any supplemental or subsequent environmental impact review or any revisions or amendments to the foregoing.

“Mitigation Measures” mean the final mitigation measures for the SCIG under which the City Site Work, Developer Site Work and Permitted Uses shall be undertaken, if at all, as set forth in **Exhibit “I”** of the Permit.

“Mitigation Monitoring and Reporting Program” means the Mitigation Monitoring and Reporting Program which shall apply to the City Site Work, Developer Site Work and Permitted Uses, which program is attached to the Permit as **Exhibit “I”** of the Permit.

“Movement” means the passing of a Container, whether empty, partially loaded or fully loaded, other than a Tenant –controlled or –furnished Container, either into or out of the SCIG by rail or truck, provided that such passing shall be counted only once for each Container entering or leaving the SCIG.

"Movement Threshold" is as defined in Section 4.3.1 of the Permit.

"New Improvements" are as described on **Attachment 13** of the Site Preparation and Access Agreement and **Exhibit "C"** to the Permit. As used in the Permit and Site Preparation and Access Agreement, the term "improvements" shall be deemed to include but not be limited to the "New Improvements."

"Non-Harbor Department Permits" means permits issued by entities other than the Harbor Department which may be necessary to undertake works and improvements in the Harbor District.

"Partial Taking" means the Condemnation of a portion of the Premises which does not substantially impair Tenant's use of the Premises for the Permitted Uses.

"Parties" means the City of Los Angeles, acting through and by its Board of Harbor Commissioners and City Council, on one hand, and the BNSF Railway Company, on the other hand.

"Permit" means the particular permit to which this glossary applies, entered into between BNSF and City relative to the SCIG.

"Permit Year" shall mean the twelve-month periods beginning on the Effective Date and each anniversary thereof during the Term of the Permit.

"Permitted Uses" shall mean the construction, operation and maintenance of an intermodal rail facility and all lawful activities related and incidental thereto, as set forth in Section 5.1 of the Permit.

"Person" means individuals, partnerships, firms, associations, corporations, trusts and any other form of governmental or business entity, and the singular shall include the plural.

"Port" means the Port of Los Angeles.

"Port Environmental Policies" is as defined in Section 7.5.1 of the Permit.

"Preliminary Site Characterization" and "Preliminary Site Characterization Report" is as defined in Section 3.2 of the Site Preparation and Access Agreement.

"Preliminary Site Closure Report" is as defined in Section 12.2.2 of the Permit.

"Premises" is as depicted on **Attachment 1** of the Site Preparation and Access Agreement, and as subsequently may be adjusted pursuant to the terms of the Site Preparation and Access Agreement, and the Permit.

"Proprietary Capacity" is as defined in Section 26.25 of the Permit. The definition of Proprietary Capacity herein is limited to the Permit.

"Rent" means the payments due to City by Tenant as further defined in Section 4 of the Permit.

"Reset Date" is as defined in Section 4.2.2.2 of the Permit.

"Rights of Way" means the aerial, surface and sub-surface rights-of-way and other use and occupancy agreements issued to third parties by City and others, copies of which are attached to the Site Preparation and Access Agreement as **Attachment 7**.

"ROW Facilities" means the facilities in place under the Rights of Way, or otherwise, as of the effective date of the Site Preparation and Access Agreement, or under newly issued agreements with Developer/Tenant once relocated.

"Severance Damages" means the compensation due a property owner, lessee or permittee for the decrease in value of the remaining property, leasehold or permit interests where the Condemnation is for a portion of a larger piece of property whose value has been diminished as a result of severance of the condemned property.

"SCIG" or "Project" means (a) the project to develop an intermodal rail facility on lands that include the Premises which intermodal rail facility shall be known as the "Southern California International Gateway," and any additions, extensions or improvements and (b) the intermodal rail facility that results from such development.

"Site Preparation and Access Agreement" shall mean that certain Site Preparation and Access Agreement entered into by the City, acting by and through its Board of Harbor Commissioners, on one hand, and BNSF Railway Company, on the other hand, relative to the design and construction of SCIG.

"Separate Lands" is as defined in Section 2.10 of the Permit.

"Site Vacation Plan" is as defined in Section 12.2.1 of the Permit.

"State Tidelands Trust" means the trust created by the State Tidelands Grant established by the State Tidelands Act as set forth in Section 26.21 of the Permit.

"Tariff" means Tariff No. 4 of the Harbor Department as it exists on the dates on which the documents to which this glossary is attached become effective, or as may be amended or superseded.

"Tariff Charges" means all charges due and owing by BNSF under the Tariff on account of its use and occupancy of the Premises.

"Tax" or "Taxes" means any state or local property taxes, ad valorem taxes, possessory interest taxes, or other transfer taxes, documentary taxes, or sales taxes arising due to the transfer of the Permit to Tenant.

"Temporary Taking" means the Condemnation of all or a portion of the Premises for a specified period of time.

"Tenant" means BNSF Railway Company and its successors and assigns.

"Term" means the term of the Permit, which shall commence on the Effective Date and is not intended to and does not refer to the term of the Site Preparation and Access Agreement.

"Term Release" means a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Premises during the term of the Permit, whether caused by Tenant or a third-party (other than invitees or third-parties whose access to the Premises has been requested by City), that contaminates or threatens to contaminate the Premises, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises).

"Term Contamination" means all contamination above Final Baseline Conditions on the Premises or adjacent premises (including soil, sediment, groundwater or air of those adjacent premises) occurring during the Term, other than contamination caused by invitees or third-parties whose access to the Premises has been requested by City.

"Third Party Agreements" means the use and occupancy agreements of various types issued to third-parties which are prior in time to the Site Preparation and Access Agreement and which apply to portions of the Premises as of the effective date of the Site Preparation and Access Agreement, copies of which are attached to the Site Preparation and Access Agreement as **Attachment 6**.

"Total Taking" means the Condemnation of all or a substantial portion of the Premises which renders the Premises unsuitable for the Permitted Uses.

"Transfer" is as defined in Section 15.1 of the Permit.

"Transfer Notice" is as defined in Section 15.2 of the Permit.

"Transferee" is as defined in Section 15.2.1 of the Permit.

"Ultimate FEIR" (which may be the EIR) means the final, binding, non-appealable environmental impact report for the SCIG certified pursuant to CEQA, including without limitation any supplemental or subsequent environmental impact review or any revisions or amendments to the foregoing or the March 7, 2013 FEIR, over which no

administrative action or litigation to challenge such environmental impact report(s) is pending.

Attachment 4

Property

ACTA triangle – real property interests jointly owned or held by or among Harbor Department and Port of Long Beach, City streets, ACTA-owned properties, properties owned by Harbor Department, properties owned by City of Long Beach, properties owned by Port of Long Beach, properties owned by City of Los Angeles.

Vacation and relocation of rail right of way in the ACTA triangle (San Pedro Line).

Rights sufficient to allow the modification of Pacific Coast Highway on lands owned by Harbor Department as described in the Ultimate FEIR.

Property jointly owned by the Harbor Department or City, and the City of Long Beach or the Port of Long Beach on both sides of the Dominguez Channel sufficient to allow the construction described in the Ultimate FEIR.

Harbor Department facilitates issuance of temporary construction easement allowing relocation of existing industrial trackage at Vopak.

Any property interests necessary for Developer to effectuate the consents necessary to reconstruct the Sepulveda rail bridge.

Any property interests necessary for Developer to effectuate the consents necessary to work in and connect to San Pedro ROW.

Any property interests necessary for Developer to effectuate the consents necessary to work in and widen the Dominguez Channel Bridge.

Other like real properties which the Parties mutually deem necessary, which were assessed in the Ultimate FEIR.

Rights

Harbor Department terminates rights of Pacific Harbor Line to serve tenants on the Premises under the Pacific Harbor Line Operating Agreement.

Harbor Department assigns its rights to relocate ROW Facilities.

Harbor Department obtains with BNSF consents for BNSF to reconstruct Sepulveda rail bridge.

Harbor Department obtains with BNSF rights for BNSF to work in and connect to San Pedro ROW

Harbor Department obtains with BNSF consents for BNSF to widen the Dominguez Channel Bridge.

Harbor Department facilitates Developer's ability to work in and modify existing rail facilities within the Alameda Corridor right of way.

Other like rights which the Parties mutually deem necessary, which were assessed in the Ultimate FEIR.

PERMIT NO. _____
GRANTED BY THE CITY OF LOS ANGELES
TO BNSF RAILWAY COMPANY

THIS PERMIT is made and entered into this _____ day of _____, 20__, by and between the CITY OF LOS ANGELES, a municipal corporation acting by and through its Board of Harbor Commissioners and BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, Texas 76131.

Section 1. Grant and Findings.

1.1 WHEREAS, City desires to have Tenant operate and maintain an intermodal rail facility on properties that include the Premises hereinafter defined and located at the Port of Los Angeles which facility shall be entitled the "Southern California International Gateway" or "SCIG" (all defined terms are contained in the Glossary attached hereto as **Exhibit "A."**); and

1.2 WHEREAS, the Parties have entered into a Site Preparation and Access Agreement to facilitate the design and construction of the SCIG to take place on the Premises in advance of such operation and maintenance, which Site Preparation and Access Agreement is attached hereto as **Exhibit "D"**;

1.3 WHEREAS, City desires to issue to Tenant and Tenant desires to accept from City this Permit, granting Tenant use and possession of the Premises, which Permit shall become effective pursuant to the terms of Section 3.2 of this Permit; and

1.4 WHEREAS, operation and maintenance of the SCIG shall comply with the requirements of the Ultimate FEIR, and adopted Project conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, City hereby grants and Tenant hereby accepts this Permit granting Tenant use and occupancy of the Premises, on which it shall undertake the Permitted Uses for the Term (all as hereinafter defined), and to which neither City nor any third-party shall have rights of access other than as described herein.

Section 2. Premises.

2.1 Description. The premises granted by this Permit consist of land described in the legal description and depicted on Drawing No. ____ (which drawing is on file in the office of Harbor Department's Chief Harbor Engineer) ("Premises"), which legal description and drawing collectively are attached hereto as **Exhibit "B,"** as the same may have been revised as Attachment 1 under the Site Preparation and Access Agreement. The Premises do not include the New Improvements, which New Improvements are identified on **Exhibit "C."** The Parties may mutually agree to adjust the area of the Premises following the Effective Date in manners consistent with this

Permit and to cause a preliminary title report to be generated to reflect the state of title applicable to such adjusted Premises. Upon such mutual agreement, Harbor Department shall revise such **Exhibit "B,"** which shall include the applicable preliminary title report, and transmit same to Tenant. Upon such transmittal, the revised **Exhibit "B"** and preliminary title report shall be deemed to supersede and replace the existing **Exhibit "B"** and any prior preliminary title report, without further action of Board or City Council.

2.2 Tenant Due Diligence and Inspection; Acceptance of Premises "AS IS." Tenant acknowledges that it has inspected the Premises in contemplation of entering into this Permit and occupying the Premises for the Permitted Uses and acknowledges and agrees that the Premises are granted to Tenant "AS IS", that is, without representation or warranty with respect thereto, express or implied, except only as set forth in this Permit, with regard to the physical or other condition of the Premises, including, geology, soils condition, the presence or absence of archeological or historical remains or suitability for any construction or use for the Permitted Uses. Tenant accepts the condition of the zoning, entitlements, and title to the Premises "AS IS", and, except only as set forth in this Permit, City makes no representation or warranty as to the zoning entitlements, condition of title or the accuracy of any information or insurance provided to Tenant by any title insurance company. City has no actual knowledge of any title deficiencies regarding the Premises. Notwithstanding the foregoing, City shall utilize commercially reasonable efforts to cause the curing of any title deficiencies that prevent Tenant's undertaking of the Permitted Uses on the Premises.

2.3 No Third-Party Rights of Use. Except as specifically provided for herein, no third-party access to the Premises during the term of this Permit will be allowed without such third-party (which third-parties shall be deemed to include non-Harbor Department personnel of City) both obtaining Tenant's consent, which Tenant may grant or withhold in its sole discretion, and executing Tenant's then-current form of third-party entry agreement. City shall direct any third-parties desiring access to the Premises to seek consent from Tenant and to obtain the right of entry form as described below. The Parties acknowledge and agree that any contractor, agent or representative not directly employed by Harbor Department is a third-party for purposes of this Section 2.3. Except as specifically provided for herein, this Permit is not intended to and shall not create rights in entities other than Tenant to use the New Improvements or the Premises. The Parties acknowledge and agree that neither the New Improvements nor the Premises shall become a "Port Facility," "Tracks," "Track Support Structures," "Port Rail Facility," "Replacement Railyard," or a "railyard of substantially similar utility" under any other existing or future agreement to which City or any other entity controlled in whole or part by City is or becomes a party including but not limited to the Alameda Corridor Use and Operating Agreement (October 12, 1999) and the Permit to Use Tracks Agreement (December 1, 1997), and the San Pedro Bay Harbor Rail Operating Permit (December 1, 1997) nor become part of any other class or category of improvements to which any party other than Tenant shall have access or use unless otherwise mutually agreed to in writing by Tenant and City. City also agrees that the

Premises are not located in a "Port Area" as that term is used in the Alameda Corridor Use and Operating Agreement (October 12, 1999).

2.4 Premises Subject to Tariff. Tenant accepts the Premises and shall undertake the Permitted Uses subject to each and every non-preempted applicable one of the terms and conditions provided herein, and to each and every non-preempted applicable one of the rates, terms and conditions of the Tariff to the extent of Applicable Law. Tenant represents and warrants that it has received, read and understands the rates, terms and conditions of Tariff and covenants that, at all times during the Term, it shall maintain a complete and current Tariff at the address set forth in Section 25 below. Except as otherwise set forth in this Permit, Tenant is contractually bound by all non-preempted Tariff rates, terms and conditions as if the same were set forth in full herein. City in its sole and absolute discretion shall determine if a conflict exists between a provision of this Permit and a Tariff provision. BNSF requests deletion in the event of such conflict, this Permit shall at all times prevail.

2.5 Preemption. Nothing contained in this Permit is intended to or shall operate to alter the laws regarding preemption or be deemed a waiver of preemption.

2.6 Harbor Department Access to Premises. Following the Effective Date, access to the Premises by Harbor Department shall be subject to prior execution of the BNSF Entry Document in the form attached hereto as **Exhibit "D."** Such execution by Harbor Department does not grant access rights to other personnel of City, whose access is described in Section 2.3.

2.7 Reservations. The Permit and the Premises are and shall be at all times subject to the reservations listed below, for which Tenant shall receive no compensation unless otherwise provided. Harbor Department's exercise of rights under this provision shall be undertaken using commercially reasonable efforts to not limit or unreasonably disturb Tenant's conduct of the Permitted Uses. Section 2.6, this Section 2.7 and Section 2.3 provide the sole means by which Harbor Department or third-parties may use or access the Premises. Such access shall be limited to the purposes outlined herein.

2.7.1 Utility or other Rights-of-Way. The rights to maintain, replace, repair, remove or upgrade facilities within the Designated Utility Installation, as well as any other sewers, pipelines (public or private), conduits for telecommunications, electric lines, gas lines, power lines, storm drains, or other such facilities in the Designated Utility Installation.

2.7.2 Prior Exceptions. All prior exceptions, reservations, grants, easements, permits or licenses of any kind whatsoever set forth on **Exhibit "B,"** (which the Parties anticipate will include matters of record in the office of the Recorder of Los Angeles County, California).

2.7.3 Mineral Rights Excluded. All minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from the Premises, without, however, the right of surface entry on the Premises, or subsurface entry except in strict accordance with all of Tenant's safety rules and other requirements, and all at all times in such a manner as to prevent any disruption of use or damage to the Premises or the SCIG facility are hereby reserved.

2.7.4 Homeland Security. Access, temporary occupancy and other rights necessary to comply with homeland security or related requirements of local, state and federal law enforcement agencies or City's Harbor Department official charged with Homeland Security responsibilities when acting in concert with any of the aforementioned authorities are hereby reserved.

2.7.5 Environmental Initiatives. Access, temporary occupancy and other rights necessary to comply with a legally enforceable federal, state or municipal law, order or regulation instituted by a Governmental Authority having jurisdiction and authority over the SCIG, Permitted Uses and the Premises under Applicable Law, or by City's Harbor Department official charged with environmental responsibilities when acting in concert with any of the aforementioned authorities, provided that the exercise of such rights do not materially interfere with the Permitted Uses are hereby reserved.

2.8 Adjustments to Premises. Land not exceeding ten percent (10%) of the area granted under this Permit may be permanently added to or deleted from the Premises by mutual written agreement of Executive Director and Tenant subject to the conditions below. Following such addition or deletion, upon transmittal by Harbor Department of a revised **Exhibit "B"** reflecting such addition or deletion, the Premises shall be deemed amended in accordance with such revised **Exhibit "B."** Nothing described as the "project" in the Ultimate FEIR when it is added to the Premises is for purposes of this Agreement or the Permit a modification or addition to the Premises or a facility modification nor will it require an amendment of either this Agreement or the Permit or further Board or City Council action. Proposed changes to the Project which were not consistent with or assessed in the Ultimate FEIR may be subject to possible review, environmental assessment and approval by the Board and City Council, as required by the Los Angeles City Charter and Applicable Law, before changes to Premises affected by Project changes can be made.

(a) So long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor) or not temporary as determined by City in its sole reasonable discretion, then the Rent determined according to the provisions of Section 4.4 shall be increased or decreased pro rata to reflect any such addition or deletion;

(b) If permanent changes in the area of the Premises are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) of the originally designated area.

2.9 No Conveyance of Fee Estate. The Parties acknowledge and agree that this Permit does not transfer or convey the Fee Estate of the Premises, and that any grant or conveyance under this Permit is solely of the leasehold estate thereto.

2.10 Separate Lands Acquired by Tenant. The Parties acknowledge that lands separate and independent from the Premises shall be acquired by Tenant in its sole and absolute discretion to undertake the Permitted Uses, including but not limited to those identified as "BNSF-Acquired" on **Exhibit "B"** hereto ("Separate Lands"). City is under no obligation to acquire such lands for or on behalf of Tenant. Upon the Expiration Date or any earlier termination of this Permit, should Tenant have acquired the fee interests in any such Separate Lands, if Tenant receives a bona fide offer it intends to accept from a third-party to purchase such Separate Lands (or portion thereof) other than as part of any financing transaction or transaction involving more than the Separate Lands and New Improvements, Tenant shall give City thirty (30) days' notice, which notice shall set forth all material terms of such bona fide offer. City shall have thirty (30) days after such notice period to enter into a binding contract with Tenant on the same terms and conditions as specified in Tenant's notice to City, with the closing of such sale to occur no later than one hundred and twenty (120) days after execution of the contract for sale between City and Tenant. The Parties understand that the right of first refusal granted herein shall expire upon Expiration of the Permit.

Section 3. Term; Effective Date, Effectiveness and Holdover.

3.1 Term. The Term shall be for a maximum of forty-five (45) years and may be less, depending on the length of the term of the Site Preparation and Access Agreement and provided that the terms of the Site Preparation and Access Agreement and this Permit, when aggregated, shall not exceed fifty (50) years. The Term shall commence on the Effective Date defined below and expire on a date certain to be known as the "Expiration Date", unless sooner terminated in accordance with the terms of this Permit. Harbor Department shall confirm the length of the Term and the Expiration Date in a writing transmitted to Tenant following their determination.

3.2 Effective Date. This Permit shall become effective after it has been approved by the City Council, following execution by the Harbor Department and approval as to form and legality by the City Attorney of the City of Los Angeles, and on the date of Completion ("Effective Date"). Harbor Department shall provide written notice of the Effective Date, which shall also be the date of Completion.

3.3 Holdover. Should Tenant remain in possession of all or any part of the Premises after the expiration or termination of this Permit as provided herein, with or without the express or implied consent of City, such occupancy shall be considered to be as "holdover" from month to month only, and not a renewal of this Permit nor an

extension for any further term, and in such case, Rent or other monetary sums due hereunder for such expired or terminated Premises shall be payable in the amount of: (i) one hundred fifty percent (150%) of the Land Rent (as defined in Section 4.2 payable for the last month of the Term, plus (ii) other charges payable hereunder at the time specified in this Permit, and such month to month occupancy shall be subject to every other provision, covenant and agreement contained herein, including any applicable adjustment of Rent set forth in Section 4.2. The foregoing provisions of this Subsection are in addition to and do not affect the right of re-entry or any right of City hereunder or as otherwise provided by Applicable Law, and in no way shall such provisions affect any right which City may otherwise have to recover damages to the extent permitted by Applicable Law, from Tenant for loss or liability incurred by City resulting from such failure by Tenant to surrender the Premises. Nothing contained in this subsection shall be construed as consent by City to any holding over by Tenant, and City expressly reserves the right to require Tenant to surrender possession of the Premises to City as provided in the Agreement, and to the extent permissible by Applicable Law, upon the expiration or other termination of this Permit.

Section 4. Rent and Other Tenant Payments.

4.1 Base Rent Consists of Land Rent and Container Charges. As consideration for rights granted in this Permit, Tenant shall pay to City in the manner herein described, the following Base Rent (composed of Land Rent plus Container Charges) when due, whether or not an invoice for same has been received.

4.2 Land Rent.

4.2.1 General; Amount. Tenant shall pay in advance to the City on or before the first day of each and every month of the Term a Land Rent as forth in this Section 4.2.1. The Land Rent payable under this Permit shall be re-set each successive five (5) year period, beginning on the fifth (5^{th}) anniversary of the Effective Date, pursuant to the method set forth below. Following the first (1^{st}) Permit Year, the Land Rent shall also be subject to annual adjustments pursuant to the Consumer Price Index (CPI) index, as set forth below, but in no event shall the Land Rent for any year be less than the previous year. Commencing upon the Effective Date of this Permit, and continuing for the amount of time equal to the difference between (i) five (5) years and (ii) the amount of time a License Fee of Seven Million Eight Hundred and Thirty Two Thousand, Six Hundred and Thirty Three Dollars ($7,832,633) has been due and paid under the Site Preparation and Access Agreement, through the fifth (5^{th}) Permit Year, subject to the provisions of Section 4.2.2.2 , Tenant shall pay to City a Land Rent annually of Seven Million Eight Hundred and Thirty Two Thousand, Six Hundred and Thirty Three Dollars ($7,832,633) to be paid in equal monthly payments, in lawful money of the United States, of Six Hundred and Fifty-Two Thousand, Seven Hundred and Nineteen Dollars and Forty-One Cents ($652,719.41).

4.2.2 Adjustment of Land Rent. It is agreed that the Land Rent shall be adjusted in accordance with the procedures provided hereafter.

4.2.2.1 Consumer Price Index – All Urban Areas ("CPI") Adjustments. Following the first (1st) anniversary of the Effective Date, through the remainder of the Term, the Land Rent shall be subject to annual adjustments pursuant to the CPI in the following manner: (i) subtract the CPI for year preceding the year in which the adjustment is being made, from the CPI for the year in which the adjustment is being made, thereby yielding the index point change; (ii) divide the index point change by the CPI for the year preceding the year in which the adjustment is being made; (iii) multiply the product of the calculation in subsection (ii) by 100; (iv) multiply the product of the calculation in subsection (iii) by the Land Rent applicable in the year prior to the year in which the adjustment is being made; (v) add the product of the calculation in subsection (iv) to the Land Rent applicable in the year prior to the year in which the adjustment is being made, thereby yielding adjusted Land Rent. For accounting purposes, the CPI adjustment shall be rounded to the nearest thousandth.

4.2.2.2 Five-Year Rate Adjustments. In addition to and not as a substitute for the CPI adjustments required by Section 4.2.1, on every fifth (5th) anniversary of the Effective Date (the "Reset Date"), the then applicable Land Rent shall be adjusted (in no event downward), with such adjustments established by order of Board ("Adjusted Land Rent"). The five-year periods in which such adjusted rates shall apply shall be referred to as "Five-Year Adjusted Periods."

4.2.2.2.1 Negotiation Period. Not more than nine (9) months, or fewer than six (6) months, before the Reset Date, the City will make its determination of the then applicable market rent and submit to Tenant as the proposed Adjusted Land Rent. During the subsequent thirty (30) calendar day period, Tenant and City shall undertake best efforts to negotiate and mutually agree upon the Adjusted Land Rent that shall apply at the commencement of such Five-Year Adjusted Period. If, despite best efforts during that thirty (30) calendar day period, City and Tenant are unable to mutually agree upon such Adjusted Land Rent, it shall be adjusted in the following manner:

4.2.2.2.2 Appraisal Process:

(a) City and Tenant shall utilize best efforts to agree upon, within ten (10) calendar days following the above-referenced thirty (30) calendar day negotiation period, a single appraiser. The appraiser so appointed shall be

directed to use good faith efforts to determine Market Rent pursuant to **Exhibit "E"** within sixty (60) calendar days of the expiration of the aforementioned ten (10) calendar day period. The appraiser shall possess the qualifications set forth on the attached **Exhibit "F."** Such appraiser's determination shall be binding upon the Parties and shall be retroactive to the commencement of the Five-Year Adjusted Period, if applicable. If, despite best efforts, City and Tenant cannot agree upon a single appraiser within such ten (10) calendar days, City and Tenant shall, within thirty (30) calendar days after the expiration of such ten (10) calendar day period, appoint one appraiser each to determine Market Rent pursuant to **Exhibit "E"** and the above and shall provide written notice of such appointment to the other Party, which notice shall summarize or attach the retained appraiser's qualifications and certify that such appraiser has been retained to determine Market Rent pursuant to **Exhibit "E."**

(b) If City and Tenant appoint appraisers within such thirty (30) day period, the two appraisers so appointed shall be directed to use good faith efforts to separately determine Market Rent pursuant to **Exhibit "E"** within sixty (60) calendar days of the expiration of the aforementioned thirty (30) calendar day period. The appraisal generated on behalf of City shall be referred to as "City Appraisal," and shall be generated at City's sole cost and expense. The appraisal generated on behalf of Tenant shall be referred to as "Tenant Appraisal," and shall be generated at Tenant's sole cost and expense. City and Tenant thereafter shall exchange appraisals. If the determinations of the City Appraisal and the Tenant Appraisal are within ten percent (10%) of one another, the Market Rent shall be the average of the two and shall be binding upon the Parties.

(c) If the determination of Market Rent of the two appraisers differs by more than ten percent (10%), then the two appraisers shall choose a third appraiser possessing the qualifications set forth on **Exhibit "F"** within thirty (30) calendar days thereafter. The third appraiser shall not make an independent determination of Market Rent, but rather shall determine only which, the City Appraisal or the Tenant Appraisal, will set Market Rent. Such determination of such third arbitrator, which determination shall be made within thirty (30) calendar days following submittal to such third arbitrator, shall be binding on the Parties. If the two appraisers fail to select a third appraiser within such time,

the two Appraisals shall be submitted by each party respectively, within ten (10) calendar days, for final and binding arbitration before one arbitrator appointed by the American Arbitration Association ("AAA") at Los Angeles, California acting pursuant to AAA's Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. The arbitrator shall review at minimum the scope of work attached hereto as **Exhibit "E"** and copies of the City Appraisal and the Tenant Appraisal, but shall not make an independent determination of Market Rent, but rather shall determine only which, the City Appraisal or the Tenant Appraisal, will set Market Rent. Such determination of the arbitrator, which determination shall be made within thirty (30) calendar days following submittal to such arbitrator, shall be binding on the Parties and shall be retroactive to the commencement of the Five-Year Adjusted Period, if applicable. Fees and costs incurred by such arbitrator and/or AAA shall be borne equally by City and Tenant.

(d) If the then-current Land Rent has not been adjusted in accordance with the foregoing provisions within two hundred and thirty days following the commencement of the appraisal process identified in this Section 4.2.2.2.2, Land Rent shall be increased to one hundred and fifty percent (150%) of the then current Land Rent. Land Rent paid at such increased rate shall be paid in such manner as required for the payment of Land Rent.

(e) Reconciliation of Payments. Once Adjusted Land Rent is established, the monies paid at the one hundred fifty percent (150%) rate shall count against the Adjusted Land Rent from the date the new five (5) year period commences. If the Adjusted Land Rent is more than the Land Rent paid at the one hundred fifty percent (150%) rate, Tenant shall immediately pay City the difference due for the period in question. If the Adjusted Land Rent is less than the amount paid at the one hundred fifty percent (150%) rate, Tenant shall be entitled to a credit against future sums owed to City under this Permit. No interest shall accrue on the amount due to City or Tenant pursuant to this provision.

4.2.2.3 No Waiver. Failure by the Parties to timely comply with the procedures of Section 4.2.2 shall not be construed to constitute a waiver of the right of City to a Rent adjustment

4.3 Container Charges.

4.3.1 Commencement, Initial Amount, and Adjustment of Container Charge. Tenant shall pay Container Charges to City in the manner set forth below commencing at the start of the fourth (4^{th}) Permit Year and thereafter for the Term. The Container Charge payable by Tenant in a particular Permit Year shall be determined by dividing the annual Land Rent due and payable in the first Permit Year of each Five-Year Adjusted Period (such that the numerator in the calculation to determine the Container Charge shall be the Land Rent due and payable in the first Permit Year of each Five-Year Adjusted Period and shall remain such for the remainder of such Five-Year Adjusted Period) by the average of the total number of Movements in the three (3) immediately preceding Permit Years (which average shall be known as the "Movement Threshold"). As a consequence the Container Charge and Movement Threshold shall adjust every Permit Year. During each Permit Year, Movements in excess of the Movement Threshold shall be assessed a Container Charge.

4.3.2 Discounting of Container Charges. In any Permit Year in which Container Charges are due and payable:

(a) No reduction of the Container Charge shall occur if the aggregate number of Movements are between 100% and 125% of the Movement Threshold.

(b) If the aggregate number of Movements is between 125% and 150% of the Movement Threshold specified for that Permit Year, then the Container Charge for Movements between 125% and 150% of the Movement Threshold during that Permit Year shall be reduced by 20%.

(c) If the aggregate number of Movements is between 150% and 175% of the Movement Threshold specified for that Permit Year, then the Container Charge for Movements between 150% and 175% of the Movement Threshold during that Permit Year shall be reduced by an additional 15% to a total discount of 35%.

(d) If the aggregate number of Movements exceeds 175% of the Movement Threshold specified for that Permit Year, then the Container Charge for Movements exceeding 175% of the Movement Threshold during that Permit Year shall be reduced an additional 15% for a total discount of 50%.

If for any reason the adjusted and reset Container Charge shall not be finally determined by the time Container Charges are assessed for the then-current Permit Year, Tenant shall continue to pay at the rate in effect for the immediately preceding Permit Year, which amount shall be a credit against the amount of the adjusted and reset Container Charge when fixed; provided,

however, that Tenant's obligation to pay the amount fixed as the adjusted and reset Container Charge shall accrue from the beginning of said period and any unpaid amounts shall bear interest from the date on which they accrued pursuant Item 270 of the Tariff. Within thirty (30) days after determination of the adjusted and reset Container Charge, Tenant shall pay to City the amount, if any, by which the adjusted and reset Container Charges which have accrued during said period exceeds the payments Tenant has made during said period under the former rate for Container Charges, together with any interest due thereon. If Tenant has made payments for such period in excess of the adjusted and reset Container Charges which accrued during such period, the excess shall be credited against future installments of the Container Charges.

4.3.3 Reporting. Tenant shall prepare and deliver to City within fifteen (15) days after the end of each calendar month, in a format approved by Harbor Department, a written statement signed by a duly authorized officer or representative of Tenant showing in reasonable detail the number of Movements and the number of movements of all empty Tenant-controlled or –furnished Containers at the SCIG during the preceding calendar month. Payment of the aggregate Container Charges for the preceding month, if any, shall accompany the written statement. Tenant shall further prepare and deliver to City on or before the ninetieth (90^{th}) day following the end of each Permit Year during the Term and on or before the ninetieth (90^{th}) day following the end of the Term a complete statement signed by Tenant's duly authorized officer or representative, showing in reasonable detail the elements and number of Movements through the SCIG during the preceding Permit Year or fraction thereof. At the time Tenant is required to submit such annual statements to City, Tenant shall also pay to City the aggregate amount of Container Charges still unpaid, if any. Within thirty (30) days following the later to occur of Harbor Department's receipt of such statement or the conclusion of the appraisal process set forth in Section 4.2.2.2.2, Harbor Department shall provide written notice to Tenant of the adjusted Container Charge and Movement Threshold.

4.4 Additional Rent; Definition of Rent.

4.4.1 Payment; Definition of Rent. In addition to any other consideration under this Agreement, including without limitation any Base Rent, Tenant shall pay to City all Additional Rent, as set forth herein, when due. Base Rent and Additional Rent shall collectively be referred to herein as "Rent". All Rent shall be paid to City at the address to which notices to City are given pursuant to Section 25, below, or at such other place as City may from time to time designate.

4.4.2 Tariff. Tenant shall pay City for any applicable charges due under the Tariff as Additional Rent.

4.4.3 Taxes and Impositions.

(a) Tenant shall timely pay all Taxes, which are attributable to the Term of the Permit and imposed with respect to the Permit and/or the use of the Premises, including, without limitation, any documentary or other transfer or sales taxes arising due to the transfer of the Permit to Tenant, or property or possessory interest taxes applicable to the Premises. City reserves the right, without being obligated to do so, to pay the amount any such Taxes not timely paid by Tenant, and the amount so paid by City shall be deemed Additional Rent hereunder, due and payable by Tenant immediately upon demand by City.

(b) Tenant hereby agrees to pay as Additional Rent such assessments, fees and charges as shall be set by the Board and that shall be reasonable and not unjustly discriminatory.

(c) Notwithstanding this Section, 4.4.3, Tenant does not waive its right to seek relief from an administrative authority or court of competent jurisdiction to the extent that such Tax, assessment, fee or charges are contrary to Applicable Law.

4.4.4 Utilities and Services. Tenant shall be liable for and shall pay all charges for services furnished to Tenant's operations on the Premises, including, without limitation, heat, power, telephone, water, light, janitorial services, security services and trash collection services, and any other services in connection with its occupancy of the Premises, including, without limitation, deposits, connection fees or charges and meter rentals required by the supplier of any such service. If any such services are not separately metered or billed to Tenant, Tenant shall pay a reasonable proportion, to be determined by City, of all charges jointly metered or billed. There shall be no abatement of Rent and City shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond City's reasonable control or in cooperation with governmental request or directions. To the extent such utilities and services are provided by City, payment for same shall be Additional Rent.

4.4.5 Rent for Non-permitted Uses. Use of the Premises for purposes not expressly permitted herein, whether approved in writing by the Executive Director or not, may result in additional charges, including charges required by the Tariff, as it may be amended or superseded. Imposing additional charges and receiving Additional Rent for non-permitted uses shall not waive City's rights to declare a default or limit City's remedies under this Agreement and at law.

4.4.6 Rent on New Improvements. With respect to additions, improvements or alterations to leasehold structures authorized by City and made by Tenant during the Term of this Permit, Tenant shall not be charged Rent for the rental value thereof unless and until title to said additions, improvements, or

alterations revert to City pursuant to the terms of this Permit or by operation of law.

4.4.7 City's Net Return. The Parties intend that this Permit shall constitute a "triple net lease" so that the Rent shall provide City with a "net" return for the Term, free of any expenses or charges with respect to the Premises, except as specifically provided in the Agreement. Accordingly, Tenant shall pay as Additional Rent and discharge, before delinquency (but subject to the terms of this Permit, including any applicable cure periods), each and every item of expense, of every kind and nature whatsoever, including Impositions or other amounts customarily paid by a tenant under a "triple net lease" or otherwise payable by Tenant in accordance with the terms of this Agreement.

4.4.8 Possessory Interest. By executing this Permit and accepting the benefits thereof, a property interest may be created known as "possessory interest" and such property interest will be subject to property taxation. Tenant, as the Party in whom the possessory interest is vested, may be subject to the payment of the property taxes levied upon such interest. Tenant acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.

4.4.9 Other Amounts. Any amounts due and owing from Tenant that arise from or are related to its undertaking of the Permitted Uses or its occupancy of the Premises.

4.5 Requirements Applicable to Tenant's Payment of Rent.

4.5.1 No Right of Offset. Tenant's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any offset, counterclaim, recoupment, defense or other right which Tenant may have against City.

4.5.2 Payments. Tenant shall render its payments at City's Harbor Department Administration Building or any other place that City from time to time may designate in writing. All payments due the City under this Permit shall be made in U.S. Dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds. Payments are due on a monthly basis whether or not City has sent an invoice for same.

4.5.3 Proration of Payments. If any payment by Tenant is for a period shorter than one calendar month, the Rent for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/365 of the total annual Rent then due and payable. All other payments or adjustments that are required to be made under the terms of this Permit and that require proration on a time basis shall be prorated on the same basis.

Section 5. Use of Premises.

5.1 Permitted Uses. The Premises shall be used for construction, operation and maintenance of an intermodal rail facility and all lawful activities related and incidental thereto ("Permitted Uses").

5.2 Operating Covenant. Once constructed, Tenant shall manage and operate the SCIG, or cause the SCIG to be managed and operated, as rail yard facility, in a manner consistent with the manner and standards by which Comparable Facilities are managed and operated, and shall perform maintenance and capital improvements necessary to maintain the SCIG in a manner comparable to that in which Comparable Facilities are maintained. Tenant shall operate the SCIG in a commercially reasonable manner, and in accordance therewith, shall conduct its operations with commercially reasonable frequency.

5.3 Responsibility for Financing. Tenant covenants that any financing required in connection with the development and operation necessary to undertake the Permitted Uses shall be the sole responsibility and cost of Tenant.

5.4 Tenant to Supply Necessary Labor and Equipment. Tenant shall, at its sole cost and expense, provide all labor and equipment necessary to undertake the Permitted Uses.

5.5 Quiet Enjoyment. City covenants that, so long as this Permit has not expired or terminated in accordance with its terms, Applicable Laws, and Mitigation Measures, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term so long as the Premises, are used in compliance with the State Tidelands Trust. By such covenant, City makes no representation or warranty as to the condition of title of the Premises or the suitability of the Premises for the Permitted Uses.

5.6 Waste or Nuisance. Tenant shall not use the Premises in any manner that constitutes waste or nuisance.

5.7 Radio Equipment. Tenant shall coordinate with the Harbor Department prior to installing any radio or telecommunications equipment to ensure that frequencies do not interfere with public safety communications or radio frequencies.

5.8 Maintenance Areas. Tenant shall not conduct or permit any maintenance of mobile or portable equipment on the Premises except as described in the Ultimate FEIR and in full compliance with Applicable Laws.

5.9 Compliance with Applicable Laws; Executive Directives. At all times in its use and occupancy of the Premises and in its conduct of operations thereon, Tenant, at its sole cost and expense, shall comply with all Applicable Laws. In addition to the foregoing, Tenant shall comply with any and all directives issued by the Executive

Director or her or his authorized representative under authority of any such Applicable Law. It is the Parties' intent that Tenant will make, at Tenant's sole cost and expense, any and all Alterations that are required by Applicable Laws. City shall comply with Applicable Laws when entering the Premises or dealing with SCIG.

5.10 Liens; Indemnity. Except where contested by Tenant in good faith in a court of competent jurisdiction, and except for non-delinquent liens arising from taxes or tax assessments and except for any liens related to any financing of any construction of improvements by Tenant on the Premises, Tenant shall keep the Premises free from liens of any kind or nature arising out of its use and/or occupancy of the Premises, including any liens arising out of any labor performed for or materials furnished to or on behalf of Tenant on the Premises. Tenant agrees that it will at all times defend and indemnify City from and against all claims for payment for labor or materials furnished in connection with the construction, erection or installation of improvements made by Tenant upon the Premises, or from additions or Alterations made thereto by Tenant, or the repair or upgrade of the same, by or at the direction of Tenant, and the costs of defending against any such claim, including reasonable attorneys' fees. If a mechanic's or other lien of the type described above shall at any time be filed against City's interest in the Premises, which is not contested by Tenant in good faith in a court of competent jurisdiction, Tenant shall cause the same to be discharged of record or bonded around within forty-five (45) days after the date of filing the same or otherwise free the Premises from such claim or lien and any action brought to foreclose such lien or Tenant shall promptly furnish City with a bond in the amount of the lien plus twenty-five percent (25%) thereof issued by a surety company reasonably acceptable to Harbor Department, securing City against payment of such lien and against any and all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien.

Section 6. INTENTIONALLY BLANK

Section 7. Tenant's Environmental Obligations During Term.

7.1 Definitions. All defined terms are contained in the Glossary contained in **Exhibit "A"** of this Permit.

7.2 Tenant Responsibility for Term Contamination.

7.2.1 Remediation. Tenant shall remediate or cause the remediation of any Term Releases such that the affected Premises are left: (a) in the Final Baseline Condition or (b) in an environmental condition that fully complies with the guidelines of, orders of, or directives of the Governmental Authority(ies) that has/have assumed jurisdiction, if any, or, whichever of the two is stricter, and free of encumbrances, such as deed or land use restrictions, except for those that may be imposed as a result of the presence of Environmentally Regulated Material despite Tenant's compliance with the foregoing requirement. As between City and Tenant, Tenant shall bear sole responsibility for all Term Contamination and any costs related thereto.

7.2.2 Tenant Responsibility; Indemnity. Except for Final Baseline Conditions, or conditions of the Premises resulting from City or third party activities on or about the Premises when Tenant is required by this Permit to allow City or such third parties onto the Premises, as between City and Tenant, Tenant bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Premises, on the user of the land, or on the user of the improvements. Except for Final Baseline Conditions or conditions of the Premises resulting from City or third party activities on or about the Premises when Tenant is required by this Permit to allow City or such third parties onto the Premises, Tenant agrees that any claims, damages, fines or other penalties asserted against or levied on City and/or Tenant as a result of noncompliance with any Applicable Laws shall be the sole responsibility of Tenant and that Tenant shall indemnify and hold City harmless from any and all such claims, damages, fines and penalties, as well as any costs expended to defend against such claims, damages, fines and penalties, including attorneys' fees that result from Term Contamination or Tenant's non-compliance with any applicable Environmental Law during the Term regarding the use, storage, handling, distribution, processing and/or disposal of Environmentally Regulated Material. City shall provide Tenant with sixty (60) days' notice to comply with any claims, damages, fines and penalties. If Tenant has not complied with such claims, damages, fines and penalties, or if Tenant has not requested a meet and confer to discuss compliance within such sixty (60) days, then city, at its sole option, may pay such claims, damages, fines and penalties resulting from Tenant noncompliance with any of the aforementioned authorities and Tenant shall indemnify and reimburse City for any such payments. As between Tenant and City, City shall indemnify and hold Tenant harmless, to the extent allowed by Applicable Law, from any and all such claims, damages, fines and penalties, as well as any costs expended to defend against such claims, damages, fines and penalties, including attorneys' fees, that result from any Final Baseline Condition.

7.2.3 Rebuttable Presumption. Tenant acknowledges and agrees that a presumption shall exist that any contamination not specifically depicted in the Final Baseline Report constitutes Term Contamination for which, as between City and Tenant, Tenant is solely responsible. City shall provide written notice of the existence of any such contamination to Tenant. Tenant may rebut such presumption by providing to City, within ninety (90) days of City's written notice, evidence demonstrating that such contamination is not Term Contamination. Otherwise, such presumption shall be deemed confirmed making Tenant solely responsible for such contamination. Whether any information submitted by Tenant rebuts the aforementioned presumption shall be within City's discretion. Should City fail to exercise such discretion reasonably and in good faith, Tenant may pursue any and all remedies it has at law or in equity, consistent with

evidentiary standards and principles of environmental science. This provision shall survive the expiration or earlier termination of this Permit.

7.3 Environmentally Regulated Material on Premises. Except as in its common carrier role, Tenant shall not cause or permit any Environmentally Regulated Material to be generated, brought onto, handled, used, stored, transported from, received or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") on the Premises, except for: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material; and (ii) those Environmentally Regulated Materials set forth in **Exhibit "G"** which are necessary for Tenant to undertake the Permitted Uses, and, (iii) those Environmentally Regulated Materials handled in conformity with Tenant's ECP. Tenant shall handle all such Environmentally Regulated Material in strict compliance with Environmental Laws in effect during the Term. To the extent that Tenant disposes of any waste that is Environmentally Regulated Material in its undertaking of the Permitted Uses, Tenant shall provide City copies of all records, indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site, including a copy of each uniform hazardous waste manifest. The name of the City of Los Angeles, the Port of Los Angeles or the City's Harbor Department shall not appear on any manifest document as a generator of such material.

7.4 Tenant Obligations In the Event of a Term Release.

7.4.1 Generally. If Applicable Law requires Tenant to report a Term Release to a Governmental Authority, Tenant shall so report and thereafter, if such Governmental Authority asserts jurisdiction over such Term Release, shall, at its sole cost and expense as between City and Tenant, manage the Term Release consistent with Environmental Laws or the Governmental Authority(ies) with jurisdiction, if any. If a schedule for such Term Release management is not prescribed by Environmental Laws, or the Governmental Authority(ies) with jurisdiction if any, Harbor Department shall reasonably prescribe such schedule in consultation with Tenant.

7.4.2 Upon discovery of any Term Contamination, Tenant shall, at its sole cost remediate the Term Contamination in accordance with Section 7.4.1.

7.4.3 Whether a Governmental Authority asserts jurisdiction over Term Contamination or not, Tenant shall characterize (including sampling and analysis) and remediate all Term Contamination such that the affected Premises are left: (a) in the Final Baseline Condition or (b) in an environmental condition that fully complies with the guidelines of, orders of, or directives of the Governmental Authority(ies) that has/have assumed jurisdiction, if any, or, whichever of the two is stricter, and free of encumbrances, such as deed or land use restrictions, except for those that may be imposed as a result of the

presence of Environmentally Regulated Material despite Tenant's compliance with the foregoing requirement.

7.4.4 Tenant shall provide copies to City of all communications between Tenant (and any third parties acting for or on its behalf), and any Governmental Authority with jurisdiction regarding all Term Releases and Term Contamination.

7.4.5 City's Rights to Remediate. If Tenant fails to wholly or partially fulfill any obligation set forth in Section 7.5, City may (but shall not be required to) take all steps it deems necessary to fulfill such obligation. Any action taken by City shall be at Tenant's sole cost and expense and Tenant shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any such action it takes.

7.4.6 Waste Disposal. In discharging its obligations for Term Releases under this Section 7.4, if Tenant disposes of any soil, material or groundwater contaminated with Environmentally Regulated Material, within thirty (30) days of Tenant's receipt of original documents, Tenant shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles, the Port of Los Angeles or the City's Harbor Department shall not appear on any manifest document as a generator of such material.

7.5 Environmental Compliance.

7.5.1 Generally. In its use and occupancy of the Premises, Tenant shall comply (and shall immediately respond to and remedy any incident of non-compliance) with: (a) Environmental Laws; and (b) the Mitigation Measures and Mitigation Monitoring and Reporting Program set forth collectively in **Exhibit "I"** hereto, which **Exhibit "I"** shall be deemed incorporated into the terms and conditions of this Permit without further action of Board or City Council, following transmittal of same by Harbor Department to Tenant.

7.5.2 ECP. Tenant shall adhere with a written program to facilitate such compliance, which written program shall be prepared by Tenant and deemed incorporated into this Permit as **Exhibit "J"** without further action of Board or Council, upon written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed, which program shall be referred to as the "Environmental Compliance Program" or "ECP."

7.5.3 Revision of Mitigation Measures. Following the Effective Date, upon mutual written agreement of the Board and Tenant, the Board may revise **Exhibit "I.**"

7.6 Environmental Audits. Tenant shall perform annual written audits of its ECP. The results of such audits shall be maintained on Premises for review by City. City shall have the right to conduct, at its sole cost and expense in a manner not interfering with Tenants operations, scheduled, periodic audits of Tenant's compliance with the ECP (as defined in Section 7.5.2) and management of Environmentally Regulated Material. Tenant shall provide access to backup materials supporting the ECP necessary for City to conduct such audits. City shall provide Tenant with copies of any written reports or results of such audits promptly upon completion of such documents.

7.7 Laboratory Testing. In discharging its obligations under this Section 7, Tenant shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory of which City shall approve in writing. By signing this Permit, Tenant hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data gathered. As used in this Section 7, "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

7.8 Survival of Obligations. Except as otherwise provided in this Section 7, this Section 7 and the obligations herein shall survive the expiration or earlier termination of this Permit.

Section 8. Tenant's Improvements and Alterations of Premises.

8.1 Alterations Require City Authorization. Tenant acknowledges Harbor Department's interest in controlling the manner in which physical changes are made to the Premises after completion of the New Improvements and covenants that, other than maintenance and repair undertaken in compliance with Section 9, it shall make no Alterations without obtaining Harbor Department's prior written authorization to undertake such Alteration. Nothing described as "property" on Attachment 4, when it is added to the Premises is for purposes of this Agreement or the Permit a facility modification or addition to the Premises nor will it require an amendment of either this Agreement or the Permit or further Board or City Council action, so long as the activities undertaken on such "property" are consistent with the March 7, 2013 FEIR or the Ultimate FEIR. Obtaining, terminating, issuing and/or assigning any of the "rights" identified on Attachment 4 will not require a facility modification or addition to the Premises or an amendment of either this Agreement or the Permit, so long as the activities undertaken in connection therewith are consistent with the March 7, 2013 FEIR or the Ultimate FEIR. All features and operations which are part of the Project in the March 7, 2013 FEIR or the Ultimate FEIR are part of the New Improvements under Section 9 of this Agreement and under Section 8 of the Permit, and will not be deemed to be Alterations to the Project irrespective of the manner or timing of the submitted applications for the Chief Harbor Engineer's General Permit for the features and operations which are part of the Project.

8.2 Authorization Procedure. When so required, Tenant shall obtain written authorization to undertake an Alteration according to the following procedure:

8.2.1 Tenant Alterations. If Tenant desires to undertake an Alteration, Tenant shall submit to Harbor Department a complete Application for Discretionary Projects that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Such drawings, plans and specifications shall be prepared and stamped by a licensed engineer registered in the State of California. Tenant bears sole responsibility for the completeness of such submittal.

8.2.2 Chief Harbor Engineer Approval. The Chief Harbor Engineer shall have the right to require reasonable changes with regard to code compliance and safety to the drawings, plans and specifications Tenant submits in connection with such Application for Discretionary Projects. If Chief Harbor Engineer orders such a change and Tenant believes that such a change will have any detrimental effect on the structural integrity or operation of the works, project or improvements, or increase any hazard to life or property, Tenant shall immediately notify Chief Harbor Engineer. If Tenant fails to provide such notification, the drawings, plans and specifications shall be treated for all purposes as if they had been originally prepared by Tenant, as changed. Chief Harbor Engineer's approval of Tenant's submittal, if any, will be reflected by issuance of a Chief Harbor Engineer's permit.

8.2.3 Non-Harbor Department Permits. Tenant acknowledges that, in addition to obtaining a Chief Harbor Engineer's General Permit, Tenant additionally may be required to obtain Non-Harbor Department Permits, the issuance of which Harbor Department does not control. In any event, obtaining the Chief Harbor Engineer's General Permit and any Non-Harbor Department Permits necessary to undertake the proposed Alteration is and shall be the sole responsibility of Tenant. Every Alteration made by Tenant shall conform with Applicable Laws, as well as with the plans and specifications as approved by Chief Harbor Engineer.

8.2.4 Conditions of Approval. Tenant acknowledges that issuance of the Chief Harbor Engineer's General Permit by Harbor Department shall be conditioned upon Tenant's demonstration that it has obtained all other permits and authorizations as required by Applicable Law with respect to the proposed Alteration as may be required by entities other than Harbor Department.

8.2.5 As-Built Plans. Upon completion of all work necessary to construct the Alteration, Tenant shall provide Harbor Department with written confirmation that such work conformed with all permits issued, and "as-built" plans and/or drawings for such work in a form acceptable to Chief Harbor Engineer. Tenant acknowledges that Harbor Department may perform inspections of the Alteration to ensure that such Alteration conformed with the permits issued. Tenant shall

undertake any corrective measures reasonably requested by Harbor Department as a result of such inspections.

8.3 Notice of Commencement and Completion of Work. Tenant shall give advance written notice to Chief Harbor Engineer of the date it will commence any construction. Within thirty (30) days of completion of construction, Tenant shall provide written notice to Chief Harbor Engineer of the date of such completion, copies of "as-built" plans for such construction, copies of all permits issued in connection with such construction and copies of all documentation issued in connection with such completed construction, including but not limited to inspection reports and certificates of occupancy.

8.4 Cost of Permits**.** Tenant, at its sole cost and expense, shall obtain all permits necessary pursuant to Applicable Law for such construction and shall require by contract that its construction contractors and subcontractors comply with all applicable federal, state, regional, and local statutes, ordinances, rules and regulations.

8.5 Cost of Construction. All construction by Tenant pursuant to this Section 8 shall be at Tenant's sole cost and expense. Tenant shall keep the Premises and New Improvements and Alterations constructed free and clear of liens for payment for labor and materials furnished for or by Tenant and shall hold City harmless from any responsibility in respect thereto.

8.6 Property of Tenant. All property brought onto the Premises by Tenant, or in the care, custody or control of Tenant, to undertake the Permitted Uses or otherwise shall be and remains the property of Tenant, and shall be there at the sole risk of Tenant. Tenant hereby waives all claims against City with respect to such property, except for injury or damage to such property caused by City's sole negligence or willful misconduct, or by any third party entering the Premises under authority or permission of, or at the behest of City.

8.7 Utilities.

8.7.1 Generally. Tenant shall maintain on the Premises as-built drawings that identify the precise position of any pipelines, utilities or improvements of any type Tenant places on the Premises, whether placed above or below ground. Upon twenty four (24) hours' written notice by Harbor Department, Tenant shall undertake at its sole cost and expense whatever measures are reasonably necessary, including subsurface exploration for any utilities or any other substructure placed on the Premises by Tenant, to precisely locate the position of such items if Harbor Department considers such as-built drawings insufficient to locate such items. Tenant agrees any work necessary to locate such items or any damage which may result from the location being incorrectly described, whether incurred by Tenant or Harbor Department, shall be borne exclusively by Tenant. Exploration and preparation of all documentation recording the location of lines or structures shall be completed within the time specified in said notice, which time shall be commercially reasonable. The subsurface exploration shall

verify the vertical as well as horizontal location of all utilities and substructures. Documentation reflecting the results of said exploration shall be filed with the Chief Harbor Engineer.

8.7.2 Harbor Department's Right to Locate. If Tenant neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any utilities or any other substructure placed on the Premises by Tenant, Harbor Department shall provide written notice to Tenant which shall specify such neglect, failure or refusal. Upon delivery of the notice specifying Tenant's neglect, failure or refusal, Tenant shall have such time as is reasonably necessary to cure such neglect, failure or refusal so long as Tenant commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of writing to Harbor Department acknowledging receipt of notice and setting forth a plan to cure such neglect, failure or refusal will constitute commencement of the cure. If Tenant submits a letter detailing why Tenant believes the claimed neglect, failure or refusal is not a neglect, failure or refusal, the Parties shall meet and confer within thirty (30) days after the date of transmittal of such letter regarding whether a neglect, failure or refusal has occurred. If the Parties cannot agree as to whether a neglect, failure or refusal has occurred within thirty (30) days after such meet and confer, or after additional time as is reasonably necessary, as to whether a neglect, failure or refusal has occurred, such dispute shall be submitted for final and binding arbitration before one arbitrator appointed by the American Arbitration Association ("AAA") at Los Angeles, California acting pursuant to AAA's Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. Once any determination that a neglect, failure or refusal has occurred is final either by agreement or arbitration, such determination shall be deemed Harbor Department's notice to Tenant as specified in this provision declaring a neglect, failure or refusal. Tenant shall have such time as is reasonably necessary to cure such neglect, failure or refusal so long as Tenant commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of a writing to Harbor Department acknowledging receipt of notice and setting forth a plan to cure such neglect, failure or refusal will constitute commencement of the cure.

8.7.3 Rules Governing Utilities. After installation, and in any event for the duration of this Permit, Tenant shall comply with the Applicable Laws regarding utilities testing and inspection requirements.

Section 9. Maintenance and Repair.

9.1 Maintenance Obligations. Except for (a) sewers, pipelines (public or private), conduits for telecommunications, electric lines, gas lines, power lines or storm drains, or the like, of third-parties, and (b) those facilities covered by Section 2.7.1 , Tenant, at its sole cost and expense, shall keep and maintain the Premises, the New

Improvements and any Alterations, in good and substantial repair and condition and shall be responsible for and perform all necessary inspection, maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements. Tenant shall obtain any required permits, including but not limited to those issued by Harbor Department, necessary for such maintenance and repair.

9.2 Failure to Maintain or Upgrade. If Tenant fails to initiate the repair processor to perform required maintenance within thirty (30) days after receipt of notice from Harbor Department to do so, Harbor Department shall provide written notice to Tenant which shall specify such failure. Upon delivery of the notice specifying Tenant's failure, Tenant shall have such time as is reasonably necessary to cure such failure so long as Tenant commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of writing to Harbor Department acknowledging receipt of notice and setting forth a plan to cure such failure will constitute commencement of the cure. If Tenant submits a letter detailing why Tenant believes the claimed failure is not a failure, the Parties shall meet and confer within thirty (30) days after the date of transmittal of such letter regarding whether a failure has occurred. If the Parties cannot agree as to whether a failure has occurred within thirty (30) days after such meet and confer, or after additional time as is reasonably necessary, as to whether a failure has occurred, such dispute shall be submitted for final and binding arbitration before one arbitrator appointed by the American Arbitration Association ("AAA") at Los Angeles, California acting pursuant to AAA's Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. Once any determination that a failure has occurred is final either by agreement or arbitration, such determination shall be deemed Harbor Department's notice to Tenant as specified in this provision declaring a failure. Tenant shall have such time as is reasonably necessary to cure such failure so long as Tenant commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of a writing to Harbor Department acknowledging receipt of notice and setting forth a plan to cure such failure will constitute commencement of the cure.

9.3 Litter and Debris. Tenant, at its sole cost and expense, shall provide sufficient dumpsters or other like containers for trash collection and disposal and keep the Premises free and clear of rubbish, debris and litter at all times. Tenant shall perform periodic inspections and cleaning of the storm water catch basins (including filters), maintenance holes, and drains, in connection with Tenant's undertaking of the Permitted Uses. Tenant, at its sole cost and expense, further shall keep and maintain the Premises in a safe, clean and sanitary condition in accordance with Applicable Laws.

9.4 Fire Protection Systems. All fire protection sprinkler systems, standpipe systems, fire hoses, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems installed by Tenant or appliances which have been

or may be installed on the Premises by Tenant shall be maintained and repaired by Tenant, at its cost, in an operative condition at all times.

9.5 City Inspections. Tenant shall allow City's representatives to perform periodic inspections of the Premises to determine Tenant's compliance with this Permit upon reasonable advance notice and in compliance with Section 2.6.

Section 10. Ownership of Improvements.

10.1 Generally. Title to the New Improvements or Alterations constructed or installed by Tenant shall remain in the name of the Tenant. Upon termination or final expiration of this Permit, as the same may be renewed or extended or newly granted, permanently installed improvements, such as concrete paving and permanent building(s), but not including cranes, moveable equipment, rail, ties, ballast, or the like, shall become a part of the land upon which they are constructed, or of the building on which they are affixed, and title thereto shall thereupon vest in City.

Section 11. Damage or Destruction of Improvements.

11.1 Insured Damages. If, during the Term, any buildings, structures, or improvements on the Premises are partially or totally destroyed from a risk covered by the insurance described in Section 14, thereby rendering the Premises partially or totally inaccessible or usable, Tenant must restore the Premises to the extent of the available insurance to substantially the same level of usability for the Permitted Uses as they were immediately before the damage or destruction.

11.2 Uninsured Damages. If, during the Term, improvements on the Premises are partially or totally destroyed from a risk not covered by the fire and extended coverage insurance described in Section 14, thereby rendering the Premises partially or totally inaccessible or unusable, such damage or destruction shall not automatically terminate the Permit. If, however, the cost of restoration exceeds ten percent (10%) of the full replacement value of improvements, as said value existed immediately before such damage or destruction, Tenant may, at Tenant's option, terminate this Permit by giving City written notice within sixty (60) days from the date of the damage or destruction. If Tenant elects to terminate as above provided, Tenant may remove at its sole cost and expense any cranes, moveable equipment, rail, ties, ballast, or the like, at its election. Tenant otherwise shall be obligated, unless otherwise directed in writing by City, to demolish all remaining damaged improvements, remove all debris and remediate all Term Contamination as provided in Section 12, at Tenant's sole cost and expense. If Tenant fails to exercise its right to terminate this Permit, this Permit shall continue in full force and effect for the remainder of the Term and Tenant shall restore the Premises to substantially the level of usability as they were immediately before the damage or destruction.

Section 12. Restoration and Surrender of Premises.

12.1 Tenant's Restoration Obligations. By the Expiration Date, or any sooner termination date of this Permit, Tenant shall be obligated to, as directed by City in its sole and absolute discretion, either (i) return the Premises to the City in good and usable condition, said condition to be consistent with a first class rail yard of similar age as repaired, maintained and upgraded as required by Section 9, ordinary wear and tear excepted, or (ii) demolish the permanent New Improvements and Alterations, and leave the Premises in a clean level and usable condition as set forth below, or (iii) demolish some of the New Improvements on the Premises, as designated by City, and leave the area of the Premises where New Improvements were demolished in a clean level and usable condition as set forth below and the remainder of the Premises in good and usable condition as set forth above. If City terminates this Permit due to Tenant's default, Tenant is still obligated as described above to restore the Premises as provided above or to pay the cost of restoration if City chooses to perform the restoration work itself. In connection with the foregoing, Tenant, at its sole cost and expense, shall restore the Premises (including the soil, groundwater and sediment) such that, on the Expiration Date, or earlier termination, they will be returned to City in (a) the Final Baseline Condition or (b) an environmental condition that fully complies with the guidelines of, orders of, or directives of the Governmental Authority(ies) that has/have assumed jurisdiction, if any, whichever of the two is stricter, and free of encumbrances, such as deed or land use restrictions, except for those that may be imposed as a result of the presence of Environmentally Regulated Material despite Tenant's compliance with the foregoing requirement. As between City and Tenant, Tenant shall bear sole responsibility for any costs necessary to comply with this Section 12.1.

12.2 Restoration Procedure. Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 12.2.1 through 12.2.4.

12.2.1 Site Vacation Plan. Not later than two (2) years before the Expiration Date and sooner if requested in writing by Harbor Department, Tenant shall submit to City a written plan hereinafter referred to as the "Site Vacation Plan," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) If Term Contamination has occurred, a work plan detailing all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) on the Premises and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with applicable Environmental Law, Port of Los Angeles Site Characterization Guidance Manual, to the extent it does not conflict with protocols established by any Governmental Authority asserting jurisdiction over the Term Contamination. Such work plan shall be developed with specific reference to determining the then-current environmental condition of the Premises as compared to the

condition of the Premises as set forth in the Final Baseline Report and whether any instances of unremediated Term Contamination exists. Such work plan shall identify all consultants Tenant intends to use to generate the written characterization. City shall approve such consultants in its sole reasonable discretion;

(b) A description of all liens placed by Tenant on the Premises, New Improvements, Alterations and/or on other fixtures and/or equipment or personal property intended to be left on the Premises following the Expiration Date;

(c) A description of all known claims, causes of action, orders or enforcement actions then pending against or in connection with the Premises, the undertaking of the Permitted Uses, and/or this Permit;

(d) All work including but not limited to demolition, grading and disposal, reasonably necessary to remove New Improvements and/or Alterations. Tenant shall identify any contractors or consultants proposed to undertake such work, which shall be approved by City in its reasonable discretion; and

(e) A written schedule with milestones acceptable to City in its reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

12.2.2 Preliminary Site Closure Report. If a Term Contamination has occurred, Tenant shall, following City's written approval of Tenant's Site Vacation Plan and not later than eighteen (18) months before the Expiration Date, or sooner if requested in writing by Harbor Department, submit to City a written report hereinafter referred to as the "Preliminary Site Closure Report," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) All findings of the characterization required by Section 12.2.1 with substance and format that conforms with the Site Characterization Guidance Manual;

(b) If the characterization required by Section 12.2.1 results in a finding that Term Contamination exists, a remediation action plan to City, the sufficiency of which is subject to City's reasonable approval, that addresses remediation of all such Term Contamination and that (i) conforms with Section 12.1; and (ii) includes a discussion of remedial action alternatives for restoration of the Premises and a timetable for each phase of restoration ("Expiration Remediation Action Plan"). The Expiration Remediation Action Plan shall conform with applicable Environmental Law, and the Site Characterization Guidance Manual, to

the extent it does not conflict with protocols established by any Governmental Authority asserting jurisdiction over the Term Contamination. Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

(c) A report detailing the status of the removal of any liens identified in connection with Section 12.2.1;

(d) A report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 12.2.1; and

(e) An updated schedule with milestones acceptable to City in its reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

12.2.3 Commencement of Remediation. Following City's written approval of Tenant's Preliminary Site Closure Report, and not later than one (1) year before the Expiration Date, or sooner if requested in writing by Harbor Department, Tenant shall:

(a) Commence remediation of any Term Contamination in accordance with the Expiration Remediation Action Plan. Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

(b) Provide a report detailing the status of the removal of any liens identified in connection with Section 12.2.1;

(c) Provide a report detailing the status of any known claims, causes of action, orders or enforcement actions identified in connection with Section 12.2.1; and

(d) Provide an updated schedule with milestones acceptable to City in its reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

12.2.4 Completion of Remediation. Not later than six (6) months before the Expiration Date, or sooner if requested in writing by Harbor Department, Tenant shall have:

(a) Completed the remediation required by the Expiration Remediation Action Plan, and have submitted to City a report certified by the consultant(s) performing the remediation confirming same;

(b) Resolved and removed all liens identified in connection with Section 12.2.1 to the reasonable satisfaction of City;

(c) Resolved all claims, causes of action, orders or enforcement actions identified in connection with Section 12.2.1 to the reasonable satisfaction of City and any governmental agencies with jurisdiction over such claims, causes of action, orders or enforcement actions;

(d) Submitted an updated schedule with milestones acceptable to City in its reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

12.2.5 Adequacy of Remediation. The determination that the Premises have been remediated to (i) the Final Baseline Condition or (ii) an environmental condition that fully complies with the guidelines of, orders of, or directives of the Governmental Authority(ies) that has/have assumed jurisdiction, if any, whichever of the two is stricter, and free of encumbrances, such as deed or land use restrictions, except for those that may be imposed as a result of the presence of Environmentally Regulated Material despite Tenant's compliance with the foregoing requirement, shall be within the reasonable discretion of City. Tenant shall notify Harbor Department in writing when it believes it has completed all work contemplated by the Expiration Remediation Action Plan.

12.3 Restoration Indemnity. In addition to and not as a substitute for any remedies provided by this Permit or at law or equity, Tenant shall defend, indemnify and hold harmless City from any and all claims and/or causes of action brought against City and from all damages and costs which arise out of or are related to:

(a) Claims brought by holders of liens on the Premises, New Improvements, and/or on fixtures and/or equipment or property left on the Premises following the Expiration Date; and

(b) Claims, causes of action, orders or enforcement actions pending against or in connection with the Premises, the Permitted Uses and/or this Permit.

Such indemnity is intended to and shall survive the expiration or earlier termination of this Permit.

12.4 Relocation Assistance. Tenant acknowledges and agrees that it and any subtenants shall not be entitled to any relocation assistance or payment in the nature of relocation assistance pursuant to the provisions of Applicable Law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.), or any subsequent enactment, with respect to any relocation of its business or activities upon the expiration of the Term or upon its earlier termination or upon the termination of any holdover.

12.5 Failure to Restore. If Tenant is obligated by this Permit to restore some or all of the improvements on the Premises, or otherwise restore the Premises, and Tenant has failed to do so to the level required by this Permit following thirty (30) days' written notice and an opportunity to cure, City shall have the right, but not the obligation to, to demolish same and restore the Premises at Tenant's cost. In that event, Tenant agrees to pay City, upon demand, City's Costs of any such removal or demolition or restoration (which City's Costs shall be deemed Additional Rent), but only to the same level required of Tenant hereunder, acknowledging that Tenant can remove all items as described above in Section 12.1.

Section 13. INTENTIONALLY BLANK

Section 14. Indemnity and Insurance.

14.1 Indemnity.

14.1.1 Generally. Except as may arise from the sole negligence or willful misconduct of City, Tenant shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), for death of or injury to persons, or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties that may arise from or be caused directly or indirectly by:

(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Tenant, its officers, agents, employees, subtenants, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the Premises by Tenant, its officers, agents, employees, subtenants, licensees or invitees under or pursuant to the provisions of this Permit or otherwise;

(c) Any act, error, omission, willful misconduct or negligence of Tenant, its officers, agents, employees, subtenants, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Permit or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation;

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subsections (a) through (d) above, existing or conducted upon or arising from the use or occupation by Tenant or its invitees on the Premises; or

(f) The provisions of this Permit.

Notwithstanding the foregoing provisions of this Section 14.1.1, the obligations of Tenant set forth in Section 14.1.1 shall not apply to: (i) the presence on the Premises of officers, agents or employees of Harbor Department under the BNSF Entry Document; (ii) the presence on the Premises of officers, agents or employees of non-Harbor Department personnel of City under Section 2.3; (iii) the presence on the Premises of any holders of a Third Party Agreement prior to termination of such Third Party Agreement; (iv) the presence on the Premises of the Rights of Way before and after relocation of same into the Designated Utility Installation; (v) the presence on the Premises of third-parties directed or requested by Harbor Department, to the extent that such third-parties have executed Tenant's then-current form of third-party entry document.

14.1.2 City's Losses. Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and City's Harbor Department, including but not limited to damage to or loss of City property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in this Section 14.1. The term "persons" as used in this Section 14.1 shall include, but not be limited to, officers and employees of Tenant.

14.1.3 Term Contamination Losses. Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of Term Contamination for which Tenant is otherwise responsible for under the terms of this Permit. This indemnification of City by

Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any Governmental Authority because of Term Contamination present in the soil or groundwater on or under the Premises. Delete if redundant with environmental section.

14.1.4 Survival of Obligations. The indemnity obligations in this Section 14.1 shall survive the expiration or earlier termination of this Permit and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

14.2 Insurance.

14.2.1 Insurance Requirements. Tenant shall procure and maintain at its expense and keep in force at all times during the Term the following insurance:

14.2.1.1 Commercial General Liability. Commercial general liability insurance, including contractual liability, bodily injury and property damage, fire legal liability, and products and completed operations insurance written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available). This insurance shall have a combined single limit of a minimum of Ten Million Dollars ($10,000,000) per occurrence and in the aggregate. Said limits shall provide first dollar coverage except that the Harbor Department may permit a self-insured retention or self-insurance.

The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, the Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under this Permit and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District.

"The policy to which this endorsement is attached shall provide a ten (10) days' prior written notice of cancellation for nonpayment of premium, and cancellation for any other reasons to the Harbor Department's Risk Manager;

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage, except as stated in Section 14.1 Indemnity.

"In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

14.2.1.2 Auto Legal Liability. In addition to the aforesaid insurance coverage, Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Permit, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Tenant's normal limits of liability but not less than Five Million Dollars ($5,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees.

14.2.1.3 All Risk Insurance. Tenant shall secure, and shall maintain at all times during the Term, and any holdover, fire and extended coverage insurance covering 100 percent (100%) of the replacement value of the works, buildings and improvements erected or owned by Tenant and the Existing Improvements on the Premises, with such provision in the policies issued to cover the same, or in riders attached thereto, as will provide for all losses. In the event of loss or damage by fire to any of such buildings or improvements, Tenant shall undertake replacement or reconditioning of such items as noted in 9.1 of this Permit.

14.2.1.4 Environmental Impairment Liability Insurance. Should Tenant's operations involve the storage or use of any type of hazardous materials or pollutants, the Tenant will be required to maintain environmental impairment liability insurance which shall include coverage

for bodily injury, property damage, including third-party claims for on-site and off-site bodily injury and property damage, clean-up and defense, with a limit of at least Twenty Five Million Dollars ($25,000,000) per occurrence, which is to remain in effect at least three (3) years after the termination of the Permit.

14.2.1.5 Federal Employers' Liability Act. As an interstate rail carrier is not subject to state-mandated Workers' Compensation laws, Tenant shall maintain coverage for injury to employees as required under the Federal Employers' Liability Act.

14.2.1.6 Professional Liability. Tenant, or Tenant's design consultant, is required to provide professional liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Permit. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability. Tenant, or Tenant's design consultant, certifies that it now has professional liability insurance, which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Permit and until three (3) years following acceptance of the completed project by BNSF. Tenant will not be required to submit evidence of coverage annually, but agrees to providing evidence of such coverage, if needed, upon written request by the Harbor Department and will have thirty (30) days to comply.Such insurance procured by Tenant shall include the following features:

14.2.2 Insurance Features.

14.2.2.1 Notice of Cancellation. Each insurance policy described above shall provide that it will not be cancelled or materially altered in coverage until after the Risk Manager has been given a ten (10) days' written notice.

14.2.2.2 Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. Track4LA® is City's online insurance compliance system. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format. The advantages of Track4LA® include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. Tenant's insurance broker or agent shall obtain access to

Track4LA® at http://track4la.lacity.org/ and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

14.2.2.3 Renewal of Policies. Within 30 days of the expiration of any policy, Tenant shall show through submitting to Track4LA® that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA®. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant, may obtain such insurance for Tenant.

14.2.2.4 Modification of Coverage. A review of adequacy of limits and coverage will be conducted every five (5) years until expiration of this Permit. Harbor Department, in its sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may request that Tenant increase or decrease amounts and types of insurance coverage required hereunder during the Term by giving ninety (90) days' prior written notice to Tenant. Tenant shall not be obligated to comply with such request if, in its sole reasonable discretion, obtaining a policy with such adjusted limits is not economically feasible. In the event Tenant makes such a determination, it shall provide written notice to City within thirty (30) days following City's written request.

14.2.2.5 Accident Reports. Tenant shall report in writing to Harbor Department within thirty (30) days after it, its officers or managing agents have knowledge of any accident or occurrence involving the death of any person or injury to any person or persons, or damage in excess of Five Hundred Thousand Dollars ($500,000) occurring upon the Premises, if Tenant's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Uses. Such report shall contain to the extent available: (1) the name and address of the persons involved; (2) a general statement as to the nature and extent of injury or damage; (3) the date and hour of occurrence; (4) the names and addresses of known witnesses; and (5) such other information as may be known to Tenant, its officers or managing agents.

14.2.3 Self-Insurance. Tenant may self-insure with respect to any or all of the above if customary under such risk management program and in keeping with risks assumed by Class I railroads generally and provided Tenant maintains a Net Worth (defined as total assets less total liabilities) of at least Fifty Million Dollars ($50,000,000). Such coverage may provide for deductible amounts as are customary under the Tenant's risk management program and in keeping with risks assumed by Class I railroads generally. Notwithstanding the foregoing, all insurance coverages (including, without limitation, self-insurance) with respect to the Premises required under this Section 14.2 will be comparable to, and no less

favorable than, insurance coverages applicable to locations owned or leased by the Tenant which is comparable to the Premises. Tenant shall, at its own expense, be entitled to make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance.

Tenant agrees to provide a letter from an authorized individual describing its program of self-insurance annually or upon written request.

Section 15. Tenant Transfers of Interests.

15.1 Transfers Prohibited. Except as expressly set forth herein, no transfer, conveyance, mortgage, grant, assignment of any Developer Site Work (except for moveable equipment, cranes, rails, ties, ballast) Tenant's Leasehold Estate or this Permit to any Person (whether voluntary or by operation of Law) (hereafter collectively referred to as "Transfer") shall occur (1) without the prior written consent of the City and (2) without satisfaction of the requirements of Sections 15.2-15.8 hereof (the consent and requirements described in clauses (1) and (2) are collectively referred to herein as the "Transfer Requirements"); *provided* that notwithstanding the foregoing, the following Transfers may be effectuated without satisfaction of the Transfer Requirements and occur without restriction or limitation: (i) the grant by Tenant of any encumbrance, assignment, pledge or mortgage on its Leasehold Estate or its right to any New Improvements in accordance with the terms of Section 15.10 and (ii) any transfer, assignment or conveyance of any Developer Site Work or this Permit in connection with the exercise of remedies with respect to any security interest, whether pursuant to foreclosure, assignment in lieu of foreclosure or otherwise, as permitted or provided by Section 15.10.

15.2 Procedure to Obtain Consent to Transfer. Notwithstanding the prohibition set forth in Section 15.1, if Tenant desires to undertake a Transfer, it may seek City's consent, which consent may not be unreasonably withheld, conditioned or delayed. Tenant covenants that before entering into or permitting any Transfer, it shall provide to City written notice at least thirty (30) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, City reserves the right to allow Tenant, on a case-by-case basis, to submit to City for City's consent Transfers that would have become effective but for Tenant's failure to seek City's consent. In any event, Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

15.2.1 Transfer Notice. Tenant's Transfer Notice shall contain each of the following:

(a) Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");

(b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business,

Transferee's character and reputation and experience in the operations proposed;

(c) Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;

(d) Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;

(e) All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Permit if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Permit; the proposed use of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;

(f) The proposed form of a guaranty or guaranties providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(g) A business plan for the Transferee including specific estimates of revenue anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources;

(h) A general description of any planned Alterations or improvements to the Premises;

(i) A description of the worth of the proposed Transferee including audited financial statements for the three (3) most recent fiscal years;

(j) Any further information relevant to the proposed Transfer that City reasonably requests; and

(k) Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records or other information of Tenant or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of Tenant's request for consent.

15.2.2 Limitations of City's Consent. If City consents to a Transfer, the following limits apply:

(a) City does not agree to waive or modify the terms and conditions of this Permit;

(b) Such consent does not constitute either consent to any further or other Transfer by either Tenant or Transferee or a bar disqualifying submittal of additional Transfer Notices in accordance with the terms of this Permit following such consent;

(c) If, following such consent, Tenant remains a party to this Permit, Tenant shall remain liable under this Permit and any guarantor shall remain liable under its guaranty;

(d) Such consent shall not transfer to the Transferee any option granted to the original Tenant by this Permit unless such transfer is specifically consented to by City in writing;

(e) Tenant may enter into that Transfer in accordance with this Section 15 if: (i) the Transfer occurs within six (6) months after City's consent; (ii) the Transfer, in the reasonable discretion of Harbor Department, is on substantially the same terms as specified in the Transfer Notice; and (iii) Tenant delivers to City promptly after execution an original executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to City;

(f) If the Transfer occurs more than six (6) months after City's consent or, in the reasonable discretion of Harbor Department, the terms of the Transfer materially change from those in the Transfer Notice, Tenant shall submit a new Transfer Notice under this Section 15, requesting City's consent. A material change for purposes of this Section 15 is one the terms of which would have entitled City to refuse to consent to the Transfer initially, or would cause, in the reasonable determination of Harbor Department, the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice; and

(g) Tenant and/or Transferee, upon City's written request, shall provide proof, in a form satisfactory in the sole reasonable discretion of the Risk Manager of Harbor Department, demonstrating that insurance of the type and limits required by Section 14 is and shall be in full effect at all times in or around the time period in which the proposed Transfer is anticipated to occur. If requested in writing by City, Transferee shall provide a guaranty agreement in a form acceptable to City obligating Transferee to pay any uninsured or underinsured loss on a claim that, in

City's reasonable determination, would have been covered by insurance fully compliant with Section 14.

(h) Transferee shall execute and deliver a written acceptance of assignment in a form reasonably acceptable to City in which Transferee expressly assumes all of Tenant's obligations under the Permit.

15.3 Factors Germane to City Consent. In evaluating any Transfer Notice, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following factors, among others:

(a) The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity(ies);

(b) The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;

(c) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;

(d) Whether the proposed Transfer is consistent with the terms and conditions of this Permit in existence when Tenant submitted the Transfer Notice and with the Applicable Laws;

(e) Whether the information provided by Tenant in connection with Section 15.2.1 justifies such consent;

(f) The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any.

15.4 Transfer Premium. As a reasonable condition to City's consent to any prohibited Transfer described in Section 15.1 (which the Parties agree does not include Transfers described in Section 15.9), Tenant shall pay to City a fee equal to twenty-five percent (25%) of any premium over the cost of Developer Site Work. Such premium does not constitute any offset of Rent or other payments due from Tenant to City under this Permit.

15.5 Charter and Administrative Code. Tenant acknowledges that proposed Transfers are subject to Applicable Law and that approval of a Transfer may require action by several separate entities, including but not limited to the Los Angeles City Council.

15.6 Tenant Remedies. If City wrongfully denies or conditions its consent, Tenant may seek only declaratory and/or injunctive relief. Tenant specifically waives

any damage claims against City in connection with the withholding or conditioning of consent.

15.7 Indemnity in Favor of City. In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Section 14 of this Permit, Tenant shall indemnify, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer.

15.8 Rent or Performance. City in its sole discretion may accept Rent or performance of Tenant's obligations under this Permit from any person other than Tenant pending approval or disapproval of a Transfer. City's exercise of discretion to accept Rent or performance shall be reflected in writing.

;

15.9 Transfers of Ownership. Notwithstanding anything to the contrary contained herein, in no event shall a transfer, conveyance, mortgage, grant, assignment of any economic or ownership interest of Tenant or any entity that directly or indirectly owns or controls Tenant in one or more transactions, regardless of whether Tenant is a publicly or privately held entity, constitute a Transfer within the meaning of Section 15.1.

15.10 Assignments for Security Purposes.

15.10.1 Generally. So long as no default by Tenant shall have occurred and be continuing, Tenant shall have the right, at any time and from time to time, to enter into Leasehold Mortgage to (i) encumber, pledge or mortgage (A) its Leasehold Estate, and (B) its right to any New Improvements on the Premises, and (ii) assign all of its right, title and interest in this Permit as security for indebtedness. Any such Leasehold Mortgage shall be subject to the following limitations:

(a) Monies borrowed will be used exclusively to construct, replace, repair or upgrade improvements on the Premises;

(b) Monies borrowed must be in a fixed amount;

(c) The collateral covered by the Leasehold Mortgage securing Tenant's loan shall cover only Tenant's leasehold Estate and interest in the New Improvements on the Premises, not the Existing Improvements nor the City's fee interests, and not any improvements or fixtures which, if removed, would leave the Premises untenantable. In this Section 15.10, "untenantable" means failing to comply with the standards described in Civil Code Section 1941.1 or its successor; and

(d) Nothing in the security interest which creates the security interest in the Leasehold Mortgagee shall amend, modify, or otherwise affect the rights of City under this Permit or any guaranty.

15.10.2 No Leasehold Mortgagee will be deemed to be a Transferee of this Permit or of the Leasehold Estate so as to require the Leasehold Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed under this Permit; provided, that any purchaser at any sale of this Permit and of the Leasehold Estate in any proceedings for the foreclosure of such Leasehold Mortgage, or the assignee or transferee of this Permit and of the Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, will be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed under this Permit from and after the date of such purchase or assignment, but only for so long as such purchaser or assignee is the owner of the Leasehold Estate.

15.10.3 There shall be no cancellation, modification, surrender or amendment of this Permit without the prior written consent of the Leasehold Mortgagee, which consent shall not be unreasonably withheld; provided, that any termination shall be subject to the Leasehold Mortgagee's rights set forth in subsection 15.10.6

15.10.4 In the event the Leasehold Mortgagee initiates any action to foreclose the interest of Tenant in this Permit, the Leasehold Mortgagee agrees to deliver to the Board in person or by registered mail a copy of any notice of default sent to Tenant and agrees, ten (10) calendar days in advance of any foreclosure sale, to give written notice to the Board by registered mail. Such notices shall be addressed as follows: Board of Harbor Commissioners c/o Director of Real Estate Division, P.O. Box 151, San Pedro, CA 90733-0151. Such notice shall specify which course(s) of the below alternative courses of action the Leasehold Mortgagee will take with respect to the Permit and any guaranty.

15.10.5 Any Leasehold Mortgagee or other acquirer of the Leasehold Estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure, or other proceedings may, upon acquiring Tenant's Leasehold Estate, and notwithstanding anything to the contrary in this Permit, sell and assign the Leasehold Estate on such terms and to such Persons as are acceptable to the Leasehold Mortgagee or other acquirer and thereafter be relieved of all obligations under this Permit; *provided* that (i) such assignee has delivered to City its written agreement to assume all the obligations of Tenant and be bound by all of the provisions of this Permit and (ii) such assignee shall qualify as an Acceptable Assignee. For purposes herein, (1)"Acceptable Assignee" means a Person that (a) has a tangible net worth of at least US $100,000,000 (as determined in accordance with generally accepted accounting principles) and

has a long-term unsecured debt rating of at least Investment Grade (or the Person's obligations under this Permit are guaranteed (the form and substance of which guarantee is reasonably acceptable to City) by a Person who meets the requirements of this clause (i)) and (ii) has substantial knowledge or experience, or has contracted with an entity that possesses substantial knowledge or experience, in intermodal operations, (2) "Investment Grade" shall mean a rating of "BBB" or better, as rated by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or a rating of "Baa" or better, as rated by Moody's Investor Service, Inc., and (3) "Person" under this Section 15.10.5 only shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization.

15.10.6 City agrees that if this Permit is terminated by City as set forth herein or rejected in any bankruptcy, reorganization, arrangement or similar proceeding of Tenant, City will enter into a new permit for the Premises in its then existing condition, with Leasehold Mortgagee or its assignee or nominee, for the remainder of the term of this Permit, effective as of the date of such termination, for the rent and other charges, and upon all of the terms, provisions, covenants and agreements in this Permit, subject only to the rights, if any, of the parties then in possession of any part of the Premises by, through or under Tenant; *provided*:

(1) The Leasehold Mortgagee or its assignee or nominee shall request such new permit from City within sixty (60) days after the date of such termination;

(2) The Leasehold Mortgagee or its assignee or nominee shall pay to the City at the time of the execution and delivery of such new permit all sums that which would at the time of the execution and delivery thereof be due pursuant to this Permit but for such termination;

(3) The Leasehold Mortgagee or its assignee or nominee shall perform and observe all covenants contained in this Permit to be performed and observed by Tenant and shall further remedy any other conditions that Tenant was obligated to perform or remedy under this Permit, except for defaults or conditions, if any, that were expressly waived by City or that are not curable, it being agreed that a default or condition will not be deemed non-curable merely because any cure period under this Permit has passed;

(4) The tenant of such new permit shall pay all reasonable costs and expenses incurred by City, if any, in preparing such new permit; and

(5) The assignee or nominee shall qualify as an Acceptable Assignee. Any new permit made pursuant to this subsection (5) will have the same priority and status as to liens as this Permit, and the tenant

under such new permit shall have the same right, title and interest in and to the Premises and the improvements thereon as Tenant had under this Permit.

15.10.7 Board shall mail to both Tenant and Leasehold Mortgagee a copy of any written notice of default in the performance of the terms and conditions of the Permit, by registered mail, return receipt requested, addressed as follows:

(Name and Address of Tenant and lender is to be specified by Tenant. If no lender is specified, notice to Tenant alone is agreed to be sufficient.)
No notice to Tenant shall be deemed to have been given unless and until a copy thereof shall have been so given to the Leasehold Mortgagee, and no default predicated upon the giving of any notice shall be complete unless a copy of such notice shall have been given to the Leasehold Mortgagee. The Leasehold Mortgagee shall have the option, but not the obligation, to cure such default. Tenant irrevocably directs that the City accept, and the City agrees to accept, performance by the Leasehold Mortgagee of any term, covenant, agreement, provision, condition or limitation on Tenant's part to be performed as though performed and observed by Tenant, *provided* such performance by the Leasehold Mortgagee shall occur within the time prescribed therefor in this Permit, including applicable periods of grace, and an additional forty-five (45) days thereafter with respect to a default by Tenant other than a default in payment of money due hereunder, or an additional period of fifteen (15) days thereafter with respect to a default by Tenant in the payment of a sum of money due hereunder, City hereby agreeing that the curing or remedying thereof by the Leasehold Mortgagee within such time shall be deemed the curing or remedying thereof by Tenant, except that with respect to any default which cannot be cured by the Leasehold Mortgagee until it obtains possession of the Premises, the Leasehold Mortgagee shall have a reasonable time after it obtains possession to cure such default, *provided* it diligently proceeds in good faith to enforce its remedies under its Leasehold Mortgage so as to obtain possession. A default which is not susceptible of being cured by any act or omission of Leasehold Mortgagee, including without limitation, any bankruptcy, insolvency or similar condition of Tenant, shall be deemed to be cured when the Leasehold Mortgagee obtains possession of the Premises.

15.10.8 At no cost or expense to City, City shall, upon request, execute, acknowledge and deliver to the Leasehold Mortgagee an agreement among City, Tenant and Leasehold Mortgagee, agreeing to the provisions of this Section 15.10, At no cost or expense to City, at the request of the Leasehold Mortgagee, City shall obtain a non-disturbance agreement in recordable form from the holder of any fee mortgage encumbering the Premises agreeing not to terminate this Permit in the event of a foreclosure of such fee mortgage. Such non-disturbance agreement shall be in form and substance reasonably acceptable to Leasehold Mortgagee and such fee mortgagee.

15.9 Tenant Name Change. Tenant shall promptly notify City in writing of any changes to its name or other contact or delivery information set forth in the preamble or the notification sections of this Permit.

15.10 Written Certificate. If requested in writing by Harbor Department, Tenant shall, within ten (10) days of its receipt of such written request, certify under penalty of perjury under California law whether it has or has not undertaken a Transfer.

Section 16. Subleases, Operating Agreements.

Should Tenant desire to enter into subleases or operating agreements with third parties to use the Premises in manners that are not Permitted Uses, it shall obtain the prior written consent of Harbor Department, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 17. Marks.

17.1 City-Associated Name or Mark. A "City-Associated" name or mark, as used in this Permit, shall mean any name or mark that (i) contains, in whole or partly, name(s) and/or mark(s) (including service marks, trademarks, names, titles, descriptions, slogans, insignias, emblems or logos) of the City of Los Angeles or any department, agency or commission thereof; and (ii) imparts the color of authority of the City of Los Angeles; and/or (3) otherwise imparts association with or endorsement by the City of Los Angeles on any goods or services offered by Tenant under such name or mark.

17.2 City Approval of Tenant Name or Mark. City shall have the right of approval of names and marks coined or created by Tenant for use on the Premises to ensure that use of the Premises permitted herein under is consistent with that of a public venue permitted by a governmental entity, provided however that City approves the use of the name "Southern California International Gateway" and the logo reproduced on **Exhibit "K"** and will not unreasonably withhold its approval of any requests by Tenant to change either such name or logo. City shall not approve names or marks that impart notions or contain elements that put the City in a false light or that are racist, sexist, derogatory to any legally protected groups/class or unfitting for public facilities.

17.3 No Assignment or Transfer of City's Intellectual Property. Nothing in this Permit shall be construed to transfer or assign to any party, signatory herein or not, any of the intellectual property rights of the City, including but not limited to trademark rights. Rights not expressly granted by City herein are reserved. Other than as approved by City, Tenant has no right to use any of the City-Associated marks.

Section 18. Force Majeure.

Notwithstanding anything to the contrary in this Permit, any prevention, delay or stoppage due to strikes; lockouts; labor disputes or shortages; acts of God; inability to obtain, labor, materials or reasonable substitutes therefor; governmental or regulatory actions; civil commotions; fire or other casualty; transportation or delivery delays; blocked access rights; acts of a public enemy; war; terrorism; severe weather; or earthquake and other causes beyond the reasonable control of the party obligated to perform (each, an "Event of Force Majeure"), shall, except with regard to either party's obligation to reimburse the other party that has already accrued, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by an Event of Force Majeure, so long as the non-performing party diligently attempts to cure the non-performance caused by the Event of Force Majeure. In the event of the happening of any of such contingencies, the Party delayed by an Event of Force Majeure shall immediately give the other Party written notice of such contingency, specifying the cause for delay or failure, and such notice from the Party delayed shall be prima facie evidence that the delay resulting from the causes specified in the notice is excusable. The Party delayed by an Event of Force Majeure shall use reasonable diligence to remove the cause of delay, and if and when the contingency which delayed or prevented the performance of a Party shall cease or be removed, the Party delayed shall notify the other Party immediately, and the delayed Party shall recommence its performance of the terms, covenants and conditions of this Permit. Notwithstanding the foregoing, the aggregate of the terms of this Permit and the Agreement shall not exceed fifty (50) years in length regardless of the existence of any Event of Force Majeure. Should this Section 18 be invoked, the term of the Permit shall be adjusted as necessary in accordance with the foregoing.

Section 19. Default and Remedies; Right of Termination.

19.1 Tenant's Default. The occurrence of any of the following shall constitute a default by Tenant under this Permit:

(a) Tenant's failure to pay when due any Rent required to be paid under this Permit if the failure continues for ten (10) business days after receipt of written notice of the failure from City to Tenant which notice may be issued no earlier than the thirtieth (30^{th}) day after Rent is due;

(b) Tenant's failure to perform any other obligation under this Permit, if Tenant fails to commence to cure the failure within thirty (30) business days after receipt of written notice of the failure from City to Tenant (which cure is deemed to have commenced once Tenant notifies City in writing of its intentions to cure the deficiency),. Notwithstanding the foregoing, should a default by Tenant occur, the City shall provide written notice to Tenant which shall specify the non-permitted uses of the Premises or other default by Tenant. Upon delivery of the

notice specifying Tenant's default, Tenant shall have such time as is reasonably necessary to cure such default so long as Tenant commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of writing to City acknowledging receipt of notice and setting forth a plan to cure such default will constitute commencement of the cure. If Tenant submits a letter detailing why Tenant believes the claimed default is not a default, the Parties shall meet and confer within thirty (30) days after the date of transmittal of such letter regarding whether an default has occurred. If the Parties cannot agree as to whether a default has occurred within thirty (30) days after such meet and confer, or after additional time as is reasonably necessary, as to whether a default has occurred, such dispute shall be submitted for final and binding arbitration before one arbitrator appointed by the American Arbitration Association ("AAA") at Los Angeles, California acting pursuant to AAA's Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. Once any determination that a default has occurred is final either by agreement or arbitration, such determination shall be deemed City's notice to Tenant as specified in this provision declaring a default. Tenant shall have such time as is reasonably necessary to cure such default so long as Tenant commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Submittal of a writing to City acknowledging receipt of notice and setting forth a plan to cure such default will constitute commencement of the cure;

(c) Tenant's abandonment of the Premises, including but not limited to Tenant's or its operator's absence from the Premises for thirty (30) consecutive days (excluding Saturdays, Sundays, and California legal holidays) while in default of any provision of this Permit; and

(d) To the extent permitted by Applicable Law:

(1) A general assignment by Tenant or any guarantor of the Permit for the benefit of the creditors without written consent of City;

(2) The filing by or against Tenant, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

(3) The appointment of a trustee or receiver to take possession of all or substantially all the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within sixty (60) days and the trusteeship or receivership is dissolved; and

(4) Any execution or other judicially authorized seizure of all or substantially all the assets of Tenant located on the Premises, or of

Tenant's interest in this Permit, unless that seizure is discharged within sixty (60) days.

(e) The undertaking of use on the Premises other than the Permitted Uses.

19.2 Replacement of Statutory Notice Requirements. When this Permit requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor statute. If City serves a statutory notice pursuant to Code of Civil Procedure Section 1161 et seq. to declare Tenant's default, City may proceed to obtain a judgment and/or order for possession and/or for any other remedy available at law and/or equity without further notice. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Permit) in the manner required by Section 25 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure Section 1162 or any similar or successor statute.

19.3 City's Remedies on Tenant's Default. On the occurrence of a default by Tenant and following the expiration of any applicable cure period while the failure to cure persists, City shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to City at law or in equity. These remedies are not exclusive but are instead cumulative. Any monetary sums that result from application of this Section 19.3 shall be deemed Additional Rent.

19.3.1 Termination of Permit. City may terminate this Permit and recover possession of the Premises. Once City has terminated this Permit, Tenant shall immediately surrender the Premises to City. On termination of this Permit, pursuant to Civil Code Section 1951.2 or its successor, City may recover from Tenant all of the following:

(a) The worth at the time of the award of any unpaid Rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by Applicable Law;

(b) The worth at the time of the award of the amount by which the unpaid Rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid Rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by Applicable Law;

(c) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of the award exceeds the amount of unpaid Rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the prime rate depicted in the Wall Street Journal at the time of the award plus two percent (2%);

(d) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform obligations under this Permit, including, without limitation, restoration expenses, expenses of improving the Premises for a new tenant (whether for the same or a different use), brokerage commissions, and any special concessions made to obtain a new tenant; and

(e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by Applicable Law.

19.3.2 Continuation of Permit in Effect. City shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the City may continue the Permit in effect after the tenant's breach and abandonment and recover Rent as it becomes due. Accordingly, if City does not elect to terminate this Permit on account of any default by Tenant, City may enforce all of City's rights and remedies under this Permit, including the right to recover all Rent as it becomes due.

19.3.3 Tenant's Subleases. Whether or not City elects to terminate this Permit on account of any default by Tenant, City may:

(a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises; or

(b) Choose to succeed to Tenant's interest in such an arrangement. If City elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by City of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

19.3.4 Maintenance, Repair or Upgrade Performed by City. Should City undertake any maintenance, repair or upgrade that otherwise would have been Tenant’s obligation to perform under this Permit, Tenant shall reimburse Harbor Department for City’s Costs (which City’s Costs shall be deemed Additional Rent) within thirty (30) days after receipt of Harbor Department's invoice for work performed to remedy Tenant’s failure to perform the aforementioned maintenance, repair or upgrade.

19.4 Form of Payment After Default. If Tenant fails to pay any amount due under this Permit when due or if Tenant draws a check on an account with insufficient funds, City shall have the right to require that any subsequent amounts paid by Tenant to City under this Permit (to cure a default or otherwise) be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to City, or other form approved by City despite any prior practice of accepting payments in a different form.

19.5 Acceptance of Rent Without Waiving Rights. City may accept Tenant's payments without waiving any rights under this Permit, including rights under a previously served notice of default. If City accepts payments after serving a notice of default, City may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

19.6 City's Default. City's failure to perform any other obligation under this Permit, if City fails to commence to cure the failure within thirty (30) business days after delivery of written notice of the failure from Tenant to City, or if the failure continues for ninety (90) days after delivery of such notice unless the failure is such that cannot be cured in ninety (90) days in which case if City fails to diligently cure within a reasonable amount of time.

19.7 Tenant's Remedy on City Default. Tenant's sole remedy for a City default shall be to seek specific performance in a court of competent jurisdiction.

Section 20. INTENTIONALLY BLANK

Section 21. Recordkeeping, Inspection and Audit.

Tenant shall keep full and accurate books, records and accounts relating to the Movements, volume and throughput handled on the Premises by it and any contractors, operators or subtenants and shall cause its contractors, operators and subtenants to keep such records. City shall have the right and privilege, through its representatives, at all reasonable times and on reasonable notice, to inspect such books, records and accounts at Tenant's offices in order to audit and/or verify, without limitation, compliance with the terms and conditions of this Permit, and the accuracy of the sums due, owing and paid to City hereunder. City shall not copy or reproduce any such books, records and accounts, provided that tenant, upon written and reasonable request from City, shall furnish to City reports or digests of such books, records and accounts. The right of inspection hereby reserved to City shall impose no obligation on City to make inspections to ascertain the condition of the Premises, and shall impose no liability upon City for failure to make such inspection. Subject to Section 26.25, City shall protect, to the extent permitted by Applicable Law, the confidentiality of any such books, records and/or accounts so inspected.

Section 22. Condemnation.

The Parties agree that if during the Term there is any taking of all or any part of the Premises or New Improvements by Condemnation, the rights and obligations of the parties shall be determined pursuant to this Section 22:

22.1 Total Taking. Tenant may elect to treat as a Partial Taking any taking that would otherwise qualify as a Total Taking. If a Total Taking of the Premises shall occur, and Tenant does not elect by notice to City, within sixty (60) days thereafter, to treat the same as a Partial Taking, then this Permit shall terminate as of the effective date of such Total Taking.

22.2 Partial Taking.

22.2.1 Effect on Permit; Award. If a Partial Taking shall occur, then any award or awards shall be applied first to repair, rebuilding or restoration of any remaining part of the New Improvements not so taken as needed to restore the totality of the New Improvements to the same level of usability as existed before the Taking (and the same shall not be a modification or addition to the Premises or a facility modification nor will it require an amendment of either this Agreement or the Permit or further Board or City Council Action). Tenant shall perform such repair, rebuilding or restoration in accordance with the applicable requirements of this Permit. The balance of any such award or awards remaining after the repair, rebuilding or restoration shall be distributed to City and Tenant as if they were proceeds of a Total Taking affecting only a portion of the Premises or New Improvements taken. Land Rent shall be adjusted ratably to address any reduction in Premises that occurs as a result of any Partial Taking.

22.2.2 Improvements. Subject to the exceptions identified in Section 10.1, should Tenant terminate this Permit pursuant to this Section 22.1, title to all improvements (including without limitation the New Improvements), additions, Alterations constructed or installed by Tenant upon the Premises and which have not already vested in City shall thereupon vest in City.

22.2.3 Waiver of CCP § 1265.130. Each Party waives the provisions of the California Code of Civil Procedure Section 1265.130 allowing either Party to petition the superior court to terminate this Permit in the event of a partial taking of the Premises.

22.3 Temporary Taking. If a Temporary Taking shall occur with respect to use or occupancy of the Premises for a period greater than one hundred and twenty (120) days, then Tenant shall, at its option, be entitled to terminate this Permit effective as of the commencement date of the Temporary Taking. If the Temporary Taking relates to a period of one hundred and twenty (120) days or less, or if Tenant does not elect within sixty (60) days after the 120th day of the Temporary Taking, to terminate this Permit, then all proceeds of such Temporary Taking (to the extent attributable to

periods within the Term) shall be paid to Tenant, and Tenant's obligations under this Permit shall not be affected in any way.

22.4 Severance Damages. The award of compensation paid for any Severance Damages will be shared between the Parties relative to their interests so damaged, whether paid for impairment of access, for land, buildings, and/or improvements. Land Rent shall be adjusted ratably to address any reduction in Premises that occurs as a result of any severance of the Premises.

22.5 Other Condemnation. In the event of any Condemnation action not resulting in a Taking but creating a right to compensation, this Permit shall continue in full force and effect without reduction or abatement of Rent, and the award or payment made in connection with such action shall be allocated between City and Tenant in accordance with their respective interests.

22.6 Settlement or Compromise. Neither City, in its Proprietary Capacity as issuer of this Permit, nor Tenant shall settle or compromise any Taking award affecting the interests of the other Party without (a) the consent by such other Party, such consent not to be unreasonably withheld, and (b) in the case of a Taking award affecting the interest of Tenant, without the consent of any Leasehold Mortgagee whose Leasehold Mortgage provides for such a right of consent. Each of City and Tenant shall be entitled to appear in all Taking proceedings affecting its respective interest, to participate in any settlement, arbitration or other proceeding involving such a Taking and to claim its Taking award under this Permit. Subject to the terms of its Leasehold Mortgage, any Leasehold Mortgagee shall also be entitled to appear in such proceedings and empowered to participate in any settlement, arbitration or other proceeding involving any Taking.

22.7 Prompt Notice. If either Party becomes aware of any Taking or threatened or contemplated Taking, then such Party shall promptly give notice thereof to the other Party.

22.8 Control of Funds after Partial Talking. In the event of a Partial Taking where Tenant is required to, or chooses to, repair, rebuild or restore the damaged improvements, the following provisions regarding control of funds shall apply:

22.8.1 Proceeds Less Than $1,000,000. All proceeds from any Partial Taking less than $1,000,000 shall be distributed to Tenant (subject to the provisions of any Leasehold Mortgage entered into by Tenant with a Leasehold Mortgagee), and shall be applied by Tenant in accordance with Section 22.2.1 .

22.8.2 Proceeds Greater Than $1,000,000.

22.8.2.1 When Fund Control Mechanism in Leasehold Mortgage Governs. If any Leasehold Mortgage entered into by Tenant and a Leasehold Mortgagee contains a fund control mechanism providing that all

proceeds from any Partial Taking in excess of $1,000,000 shall be deposited with such Leasehold Mortgagee or a third party depository specified in such Leasehold Mortgage to be disbursed to repair, rebuild or restore the Premises, the mechanics for fund control set forth in such Leasehold Mortgage shall have priority over the corresponding mechanics for fund control set forth in Section 22.8.2.2.

22.8.2.2 When Fund Control Mechanism in This Permit Governs. Subject to Section 22.8.2.1, if proceeds from any Partial Taking total in excess of $1,000,000, then upon request of City all such proceeds shall be deposited with an escrow mutually acceptable to the Parties to be disbursed to repair, rebuild or restore the Premises and the balance, if any, of such proceeds shall be allocated between City and Tenant in accordance with their respective interests.

22.9 Waiver. The provisions of this Permit governing Takings are intended to supersede the application of Chapter 10, Article 2 of the California Code of Civil Procedure and all similar laws, to the extent inconsistent with this Permit. Nothing in this Section 22 shall be construed to limit City's powers with respect to Takings in its Governmental Capacity.

Section 23. License, Fees.

Tenant shall pay all real estate license and permit fees required with respect to the Premises during the Term of the Permit. Any sums due and owing by Tenant under this Section 23, or paid by City on Tenant's behalf, shall be deemed Additional Rent.

Section 24. Signs.

Tenant shall not erect or display, or agree to be erected or displayed, on the Premises, or upon works, buildings and improvements made by Tenant, any advertising matter of any kind, including signs, without first obtaining a Harbor Engineer's General Permit, issuance of which shall not be unreasonably withheld, conditioned or delayed.

Section 25. Notices.

The Parties shall send all notices or other communication necessary under this Permit in writing by personal service, or express mail, Federal Express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the Parties at their respective addresses as follows:

If to Tenant:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: AVP, Real Estate

With copies to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: Controller

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131
Attn: Executive VP Law and Public Affairs

If to City:

Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Executive Director

With copies to:

Los Angeles City Attorney's Office
425 South Palos Verdes Street
San Pedro, California 90731

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. Either Party may change the address at which it desires to receive notice upon giving written notice of such request to the other Party.

Section 26. Miscellaneous.

26.1 Definitions, Titles and Captions. Capitalized terms uses herein, unless otherwise defined, shall have the respective meanings specified in the Glossary of Defined Terms attached hereto as **Exhibit "A".** Unless otherwise indicated, references in this Permit to sections, subsections, paragraphs, clauses, exhibits and schedules are to the same contained in or attached to this Permit. Additionally, the Parties have inserted the section titles in this Permit only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Permit or the intent of the Parties in including any particular provision in this Permit.

26.2 Construction of Permit. This Permit shall not be construed against the Party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all Parties had jointly prepared this Permit and it shall be deemed their joint work product; each and every provision of this Permit shall be construed as though all of the Parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one Party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting Party shall not be applicable.

26.3 Entire Agreement; Amendments. This Permit and all exhibits referred to in this Permit constitute the final complete and exclusive statement of the terms of the agreement between City and Tenant pertaining to Tenant's use and occupancy of the Premises and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Permit by, and neither Party is relying on, any representation or warranty outside those expressly set forth in the application for this Permit.

26.4 Modification in Writing. This Permit may be modified only by written agreement of all Parties. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or elsewhere, except as otherwise provided in this Permit or the Site Preparation and Access Agreement.

26.5 Exhibits. All exhibits to which reference is made in this Permit are deemed incorporated in this Permit, whether or not actually attached. References to sections are to sections of this Permit unless stated otherwise.

26.6 Waivers. A failure of any Party to this Permit to enforce the Permit upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing. The subsequent acceptance of Rent by the Board shall not be deemed to be a waiver of any other breach by Tenant of any term, covenant or condition of this Permit, other than the failure of Tenant to timely make the particular Rent payment so accepted, regardless of the Board's knowledge of such other breach. No delay, failure or omission of either Party to execute any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee then or thereafter accrued, shall impair any such right, power, privilege, or, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by either Party shall be required to restore or revive the time is of the essence provision hereof after waiver by the other Party or default in one or more instances. No, right, power, remedy or privilege of either Party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, or remedies given to City by this Permit are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by Applicable Law, in that the exercise of one right, power, or remedy by City shall not impair its rights to any other right, power, or remedy.

26.7 Governing Law and Venue. This Permit is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. Any action or proceeding arising out of or related to this Permit shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules. If either Party files or attempts to litigate an action in violation of this Section 26.7 , the other Party shall be entitled to recover reasonable costs and attorneys' fees incurred to enforce this Section.

26.8 Joint and Several Obligations of Tenant. If more than one individual or entity comprises Tenant, the obligations imposed on each individual or entity that comprises Tenant under this Permit shall be join and several.

26.9 Visual Artists' Rights Act.

26.9.1 Generally. Tenant shall not install, or cause to be installed, any work of art subject to the Visual Artists' Rights Act of 1990 (as amended), 17 U.S.C. 106A, *et seq*., or California Civil Code Section 980, *et seq.*, (hereinafter collectively "VARA") on or about the Premises without first obtaining a waiver in writing, of all rights under VARA, satisfactory to the Harbor Department and approved as to form and legality by the City Attorney's Office, from the artist. Said waiver shall be in full compliance with VARA and shall name City as a party for which the waiver applies.

26.9.2 Prohibition. Any work of art installed, or caused to be installed, by Tenant without the prior written authorization of the Harbor Department shall be deemed a trespass, removable by City, by and through its Harbor Department, upon three (3) days written notice, all costs, expenses and liability therefor to be borne exclusively by Tenant.

26.9.3 Indemnity. Tenant, in addition to other obligations to indemnify and hold City harmless, as more specifically set forth in this Permit, shall indemnify and hold harmless City from all liability resulting for Tenant's failure to obtain the artist's waiver of VARA and failure to comply with any portion of this Section 26.9.

26.9.4 Cumulative Remedy. The rights afforded the City under this Section 26.9 shall not replace any other rights afforded City in this Permit or otherwise, but shall be considered in addition to all its other rights.

26.10 Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All assignments, subleases and transfers of interest in this Permit under or pursuant to this Permit shall

contain this provision. The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached **Exhibit "R"** are incorporated herein and made a part hereof.

26.11 Severability. Should any part, term, condition or provision of this Permit be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or charter, the validity of the remaining parts, terms, conditions or provisions of this Permit shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Permit, then such part, term, condition or provision shall be deemed not to be a part of this Permit; or (b) if such part, term, condition or provision is material to this Permit, then the Parties shall revise the part, term, condition or provision so as to comply with the Applicable Law or public policy and to effect the original intent of the Parties as closely as possible.

26.12 Waiver of Claims. To the fullest extent permitted by Applicable Law, Tenant and City hereby waives any claim against one another and their officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Permit, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Permit null, void or voidable or delaying the same or any part thereof from being carried out, including but not limited to the ability to undertake the Permitted Uses.

26.13 Attorneys' Fees. In any legal action or other proceeding brought to enforce or interpret the terms of this Permit, the prevailing Party shall be entitled to "reasonable attorneys' fees" and any other costs and expenses, including but not limited to expert fees, incurred in that proceeding in addition to any other relief to which it is entitled.

26.14 Conflict of Interests. The Parties to this Permit have read and are aware of the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of City's Harbor Department. All Parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Permit. Notwithstanding any other provision of this Permit, it is further understood and agreed that if such a financial interest does exist at the inception of this Permit, City may immediately terminate this Permit by giving written notice thereof.

26.15 Business Tax Registration Certificate.

26.15.1 Tenant. Tenant represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1,

Chapter 2, Sections 21.00 et seq. of City's Municipal Code, or its successor). Tenant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the Term.

26.15.2 Contractors. Tenant represents that it will require its contractors and subcontractors to registered their business with the Office of Finance of the City of Los Angeles and to obtained and hold from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 et seq. of City's Municipal Code, or its successor) for all work done on the Premises.

26.15.3 Subtenants. Tenant represents that it will include in all its subleases the requirement that the subtenant register its business with the Office of Finance of the City of Los Angeles and obtain and hold from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 et seq. of City's Municipal Code, or its successor) and further require that the subtenant maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and not allow any such Certificate to be revoked or suspended during the term of its sublease.

26.16 Service Contract Worker Retention Policy. The Board adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 *et seq.* of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the SCWR shall entitle the City to terminate this Permit and otherwise pursue legal remedies that may be available.

26.17 Wage and Earnings Assignment Orders/Notices of Assignments. Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees. Tenant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders/Notices of Assignments applicable to them personally. Tenant shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code Section 5230 et seq. Tenant shall maintain such compliance throughout the Term.

26.18 Equal Benefits Policy. The Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 *et seq.* of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the policy shall entitle the City

to terminate any agreement with Tenant and pursue any and all other legal remedies that may be available. Tricia Carey

26.19 Living Wage Policy. City of Los Angeles Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 *et seq.* of the Los Angeles Administrative Code. Tenant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Permit and otherwise pursue legal remedies that may be available.

26.20 Compliance with Laws. During the Term, the Parties shall, at their own expense and effort, comply with all Applicable Laws affecting the Premises. Tenant shall obtain and pay for all permits and approvals required by Applicable Law in connection with Tenant's demolition/construction upon, operation, use and occupancy of the Premises and shall comply with all such permits and approvals. Tenant shall be responsible, at its sole cost and expense, for all improvements or New improvements or Alterations required from time to time to comply with Applicable Laws. Notwithstanding the foregoing, Tenant shall have the right to contest any such Applicable Laws in accordance with this Permit.

26.21 State Tidelands Act, Grant and Trust; City Charter. This Permit is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Permit is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City", approved June 3, 1919 (Stats. 1929, CH 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Tenant agrees that any interpretation of this Permit and terms contained herein must be consistent with the limitations, conditions, restrictions and reservations of the Act and the City Charter.

26.22 Successors. This Permit shall be binding upon and shall inure to the benefit of the successors and assigns of City and shall be binding upon and inure to the benefit of the successors and permitted assigns and subtenants of Tenant.

26.23 No Third Party Beneficiaries. Nothing in this Permit shall be deemed to confer upon any Person (other than City, Tenant or Leasehold Mortgagees) any right to insist upon, or to enforce against City or Tenant, the performance or observance by either Party of its obligations under this Permit.

26.24 Disclosure Laws. Tenant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include but are not limited to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws"). Tenant further acknowledges City's obligation and intent to comply with such Disclosure Laws in all respects. Notwithstanding the foregoing, in the event that City receives a request for disclosure of records in connection with this Section 15.2.1(g), City will immediately

notify Tenant in writing, enclosing a copy of such request, at which point Tenant may take whatever steps deemed appropriate, including but not limited to seeking a protective or other order excusing disclosure from a court of competent jurisdiction. In the absence of such an order from a court of competent jurisdiction excusing City from its disclosure obligations, City shall undertake whatever action is necessary to comply with the requirements imposed by the applicable Disclosure Law(s). In the event that any action is filed by Tenant and/or by any requester of information where Tenant elects to challenge any disclosure, and City is named as a party to that action, Tenant shall defend and hold City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliated entities, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing harmless from any and all defense costs and judgments or settlements in any such action as well as all other losses and expenses arising out of or related to such action.

26.25 Proprietary Capacity. Subject to application of the doctrine of preemption, the capacity of City in this Permit shall be as ground lessor ("Proprietary Capacity"), and any obligations or restrictions imposed by this Permit on City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacities of City, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, State or local Applicable Law ("Governmental Capacity"). Whenever not expressly otherwise stated, (a) City, when acting in its Proprietary Capacity as a ground lessor, shall not unreasonably withhold it approvals to matters requiring its approval hereunder, and (b) Tenant shall not unreasonably withhold its approval to matters requiring its approval hereunder.

26.26 Time is of the Essence. Subject to the provisions of Section 18, time shall be of the essence as to all dates and times of performance, and obligations set forth herein, whether or not a specific date is contained herein. If performance is required by the terms hereof on a Saturday, Sunday or legal holiday in California, the performance shall be made on the next business day.

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

Dated: _____

By _____
Executive Director

Attest: _____
Board Secretary

BNSF RAILWAY CO.

Dated: _____

By _____
_____
(Print/type Name and Title)

Attest: _____
_____
(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 20_____
CARMEN A. TRUTANICH, City Attorney
Janna Sidley, General Counsel

By _____
Steven Y. Otera, Deputy

ORDER NO.

IT IS HEREBY ORDERED by the Board of Harbor Commissioners that the SITE PREPARATION AND ACCESS AGREEMENT and PERMIT NO. 901 granted by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to BNSF RAILWAY COMPANY, is hereby approved and the Executive Director and the Secretary of the Board are hereby authorized and directed to execute and attest to the same on behalf of the City of Los Angeles upon this Order being approved by the City Council as described below.

The Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners of the City of Los Angeles and shall cause a copy of the same to be presented to the City Council as provided in Section 607 of the Charter of the City of Los Angeles. If the Council shall approve this Order within 30 days after such Order shall have been presented to it, or if the Council shall fail to disapprove this Order within said 30 days, the Order shall be deemed approved and shall become effective upon such approval without publication. The Amendment approved by this Order shall become effective immediately upon execution by the City Executive Director and Board Secretary after such Council approval of the Order.

I HEREBY CERTIFY that the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting of _____.

KORLA G. TONDREAULT
Commissioner Secretary

APPROVED AS TO FORM

3/20
_____, 2013
CARMEN A. TRUTANICH City Attorney

By _____

BL436raw Order 607

TRANSMITTAL 4

FINAL MITIGATION MONITORING AND REPORTING PROGRAM

Southern California International Gateway (SCIG) Project

Environmental Impact Report (EIR)

(ADP NO. 041027-199 / SCH NO. 2005091116)

Prepared By:

Los Angeles Harbor Department
Environmental Management Division
425 S. Palos Verdes Street
San Pedro, CA 90731
Phone: (310) 732-3675

With Assistance From:

ENVIRON

March 2013

TRANSMITTAL 5

Contents

SECTION **PAGE**

TABLES

Section 1

Mitigation Monitoring and Reporting Program Overview

Introduction

Section 21081.6 of the California Public Resources Code requires a Lead or Responsible Agency to adopt a mitigation monitoring and reporting program (MMRP) when approving a project that adopts findings of significant impacts and incorporates mitigation measures into the project or imposed as conditions of project approval in order to mitigate or avoid significant impacts. The purpose of this program is to ensure that when an environmental document, either an Environmental Impact Report (EIR) or a negative declaration, identifies measures to reduce potential adverse environmental impacts to less than-significant levels that those measures are implemented as detailed in the environmental document. As lead agency for the Southern California International Gateway (SCIG) Project (proposed Project) the Los Angeles Harbor Department (LAHD) is responsible for implementation of this MMRP.

An EIR has been prepared for the proposed Project that addresses the potential environmental impacts, and where appropriate, recommends measures to mitigate these impacts. As such, this MMRP is required to ensure that adopted mitigation measures are successfully implemented and a monitoring strategy was prepared for each mitigation measure identified in the EIR. Once the Board of Harbor Commissioners adopts the MMRP, the mitigation monitoring/reporting requirements will be incorporated into the appropriate specifications, permits, and agreements (e.g., engineering specifications, engineering construction permits, real estate entitlements, and/or agency permits and development agreements). Therefore, in accordance with the aforementioned requirements, this document lists each mitigation measure, as well as each lease measure and project conditions of approval, and describes the methods for implementation and verification, and identifies the responsible party or parties as detailed below in the MMRP Implementation section. Based on public comment, this MMRP has been expanded to include for reporting and tracking purposes, implementation requirements for a Traffic Management Plan during construction.

References cited in this MMRP incorporate the detailed references listed in the EIR for the proposed Project.

Project Overview

The proposed Project site is located near the Wilmington community to the west, the City of Carson to the north, and the City of Long Beach to the east, in a primarily industrial area. The site is bounded generally by Sepulveda Boulevard to the north, Pacific Coast Highway (PCH) to the south, the Dominguez Channel to the west, and the Terminal Island Freeway to the east. The proposed Project also includes adjacent locations for the proposed lead tracks south of PCH and north of Sepulveda Boulevard and for nearby business alternate sites. The general area is characterized by heavy industry, goods handling facilities, and port-related commercial uses consisting of warehousing operations, trucking, cargo operations, transloading, container and truck maintenance, servicing and storage, and rail service. In addition, residential and commercial uses are located east of the project site, on the other side of the Terminal Island Freeway in west Long Beach.

The proposed Project involves constructing and operating an intermodal railyard that would transfer containerized cargo between trucks and railcars. For the purposes of the EIR, it is assumed that construction of the proposed Project would occur from 2013 to 2015 and that the Burlington Northern Santa Fe Railway (BNSF) would operate SCIG under a new, 50-year lease with LAHD starting in 2016 and ending in 2066. The SCIG Project involves the following major elements:

- Acquisition of privately-owned properties by the applicant and termination of existing and expired leases for businesses on LAHD land, and the offering of new alternate sites by LAHD to some of the existing businesses;
- Demolition of existing structures and construction of some business facilities on nearby alternate sites offered by the LAHD;
- Construction and operation of an intermodal railyard consisting of loading and storage tracks for trains, electric-powered rail-mounted cranes incorporating regenerative braking technology, container loading and storage areas, locomotive service area, administrative and maintenance facilities, lighting, paved roadways, and a truck gate complex;
- Construction of lead rail tracks by widening the Dominguez Channel rail bridge to connect the railyard to the Alameda Corridor and reconstructing the Sepulveda Boulevard rail bridge and the PCH overpass to accommodate Project operations;
- Construction of roadway improvements to provide truck access to the proposed Project site; and
- The use of the San Pedro Bay Ports' Clean Air Action Plan (CAAP)-compliant drayage trucks on designated truck routes between SCIG and the Ports that would be monitored by global positioning system (GPS) through requirements established in contracts for dray services.

Each of these key proposed project elements is described in further detail below.

Project Objectives

LAHD has expressed its intent to promote increased use of rail in general, and near-dock rail facilities in particular, as indicated in its Rail Policy, and to comply with the Mayor of Los Angeles' goal for the LAHD to increase growth while mitigating the impacts of

that growth on the local communities and the Los Angeles region by implementing pollution control measures, including the elements of the CAAP specific to the proposed Project. Similarly, the California Environmental Protection Agency has recommended the SCIG project as a preliminary candidate in the 2007 Goods Movement Action Plan and, the Southern California Association of Governments (SCAG) has identified the SCIG project as potentially playing a key role in addressing the growth of high-density truck traffic in its 2008 Regional Transportation Plan Goods Movement Report (SCAG, 2008) and the 2012 Regional Transportation Plan (SCAG, 2012).

The proposed Project would help to meet the demand for efficient rail transport as contemplated by the LAHD's Intermodal Rail Policy, adopted in Resolution 6297 on August 11, 2004 (LAHD, 2004), which calls for on-dock and near-dock intermodal facilities for shippers, carriers, terminal operators, and Class I Railroads. In addition, in a Resolution adopted February 9, 2005 (LAHD, Resolution 6339 (LAHD, 2005)), the LAHD found that there would be a strategic benefit to having competitively balanced, near-dock intermodal container transfer facilities, ensuring access for both of the Class I Railroads that serve the Ports. Furthermore, the need for more efficient, and hence more economical and less polluting, rail-based cargo transportation has prompted state and regional planning agencies to encourage the development of additional near-dock rail facilities (e.g. CARB, 2007; SCAG, 2012). Through a public process involving solicitation of expressions of interest, the Port selected BNSF to propose a near-dock rail intermodal facility.

The primary objective and fundamental purpose of the proposed Project is to provide an additional near-dock intermodal rail facility serving the San Pedro Bay ports marine terminals that would meet current and anticipated containerized cargo demands, provide shippers with comparable intermodal options, incorporate advanced environmental controls, and help convert existing and future truck transport into rail transport, thereby providing air quality and transportation benefits.

The following specific objectives of the proposed Project would accomplish the primary objective and fundamental purpose:

1. Provide an additional near-dock intermodal rail facility that would:
    a) Help meet the demands of current and anticipated containerized cargo from the various San Pedro Bay port marine terminals, and
    b) Combine common destination cargo "blocks" and/or unit trains collected from different San Pedro Bay Port marine terminals to build trains for specific destinations throughout the country.
2. Reduce truck miles traveled associated with moving containerized cargo by providing a near-dock intermodal facility that would:
    a) Increase use of the Alameda Corridor for the efficient and environmentally sound transportation of cargo between the San Pedro Bay Ports and destinations both inland and out of the region, and
    b) Maximize the direct transfer of cargo from port to rail with minimal surface transportation, congestion and delay.
3. Provide shippers carriers, and terminal operators with comparable options for Class 1 railroad near-dock intermodal rail facilities.

4. Construct a near-dock intermodal rail facility that is sized and configured to provide maximum intermodal capacity for the transfer of marine containers between truck and rail in the most efficient manner.
5. Provide infrastructure improvements consistent with the California Goods Movement Action Plan.

Project Elements

Property Acquisition and Disposition of Businesses

The proposed Project requires acquisition or lease of non-LAHD properties by the project proponent (BNSF) and a new lease for the LAHD properties, which would result in certain terminations or non-renewal of existing leaseholds and the movement or displacement of businesses occupying those properties. Three of the existing businesses within the proposed Project site (portions of California Cartage and Fast Lane Transportation (Fast Lane), and the Alameda Corridor Transportation Authority (ACTA) maintenance yard) are assumed for purposes of EIR analysis to move to alternate sites on nearby properties. However, as it is possible that California Cartage and Fast Lane would elect to make other arrangements, the final selection of businesses for the alternate sites is beyond the scope of the EIR. All other remaining businesses within the proposed Project site on LAHD properties would have their leases non-renewed/terminated, and those on non-LAHD properties would be removed upon acquisition of the properties by BNSF. The displaced businesses for which no alternate sites were identified as part of the proposed Project are assumed to move to other compatible areas in the general port vicinity as part of their own business operations and plans.

The assumed alternate locations identified for a portion of Fast Lane Transportation and a portion of California Cartage operations are located south of the railyard site, and the ACTA maintenance facility would move to an approximately 2.5-acre site just west of the Dominguez Channel. The proposed Project assumes that California Cartage would maintain the property they currently lease from SCE, and that Fast Lane would continue to operate on parcels it currently occupies outside the Project site. These businesses would construct new facilities on the alternate sites that are assumed to generally resemble the existing facilities except for being more modern and efficient. They are assumed to continue operating on their existing parcels through the first construction year while the new facilities are being constructed and then to resume operations on their new sites and their existing property.

Railyard Elements

The proposed SCIG railyard would have three major sets of tracks (two sets of loading tracks, each with six tracks, and one set of two storage tracks) comprising a total of approximately 105,000 feet of track (including the north and south lead tracks, see below) and at least 37 switches. The railyard would also include a number of support elements such as cargo-handling equipment (yard hostlers and support vehicles), 20 electric-powered, rail-mounted, wide-span gantry cranes (RMGs) up to 98 feet high for loading and unloading trucks and trains and managing the stacks of containers, office and

maintenance buildings, 40 high-mast light standards for area lighting, and a truck gate complex.

Two sets of lead tracks would extend north and south from the railyard. The two north lead tracks, one from each group of loading tracks, would be elevated and would cross first the SCE property and an existing access road via an overpass and then Sepulveda Boulevard on a rail bridge to connect the railyard to the ports' San Pedro Branch track. These approximately 1,000-foot-long tracks would operate primarily as tail tracks for the assembly and breaking down of trains. The north lead tracks would require the relocation of existing SCE electrical towers in order to meet clearance requirements by the State Public Utilities Commission (PUC). The two south lead tracks, each approximately 4,000 feet long, would link the railyard to the Alameda Corridor, west of the facility, and would serve as the facility's connection to the regional rail network; normally, all trains would enter and exit the facility on the south lead tracks. The south lead tracks would curve westward under PCH, connect to the ports' Long Beach Lead track, cross the Dominguez Channel on a reconstructed bridge, and then join the Alameda Corridor mainline tracks. Two short tracks near the south lead tracks would be used for locomotive fueling and minor servicing; no locomotive maintenance would occur at the proposed Project.

The proposed Project would include a number of roadway and trackage improvements in order to provide truck and train access to the SCIG facility and adjacent SCE property. A new interchange would be constructed on PCH to provide truck access to the facility and to allow the south lead tracks to pass under PCH. The Dominguez Channel Bridge would be widened to accommodate the south lead tracks, and the existing railroad bridge over Sepulveda Boulevard would be replaced by a modern bridge capable of carrying three tracks (the north lead tracks and the San Pedro Branch track). An access road with an underpass at Sepulveda Boulevard would be constructed beneath the elevated north lead tracks to provide truck and other vehicular access to the SCE property.

Construction

Construction of the proposed project, including the alternate business locations, would occur over approximately a 36-month period from 2013 to 2015. . Construction activities would occur essentially simultaneously in three major areas:

1. The railyard including the north lead tracks and railroad bridge over Sepulveda Blvd;
2. PCH grade separation and interchange;
3. The south lead tracks area along the Long Beach Lead and Alameda Corridor, including the Dominguez Channel Bridge.

Depending on the amount of construction activity at any given time, there would be 30 to 150 workers per day, 12 to 30 pieces of construction equipment, and 30 to 150 vehicles transporting workers and materials to and from the various construction areas. Construction would normally occur during one 10-hour shift per day, up to six days per week, consistent with City of Los Angeles code requirements to reduce noise and limit construction activities to daytime hours (and, for the portion of construction within the City of Long Beach, consistent with the City of Long Beach code requirements).

Activities common to all construction activities would include servicing construction equipment at designated areas; transporting construction workers, supervisors, and

inspectors onsite in light-duty trucks and light buses; and controlling dust, track-out, and erosion by following a Construction Storm Water Pollution Prevention Plan. Construction in all areas would also include soil and groundwater remediation as necessary, hazardous waste management from demolition and remediation activities, staging area management, and public utility and traffic management.

Operations

The SCIG facility is assumed to begin operation at the start of 2016 and to reach full operation (maximum capacity) in 2035. It would operate 24 hours a day (three labor shifts), 7 days per week, 360 days per year; trucks and trains would arrive at and depart from the facility day and night. Upon opening, the facility would have approximately 93 employees, which would increase to a maximum of 450 employees at full operation. The facility's design and operational model include a high degree of automation and computerized logistics management in order to minimize truck trips.

Containers would be picked up from and delivered to the marine terminals in the Ports by on-road drayage trucks (big-rig, semi-trailer trucks) operated under contracts between various trucking companies and BNSF for drayage between the SCIG railyard and the Ports. The contracts would specify that all trucks would be powered by engines that meet or exceed the 2007 EPA on-road standards, thereby ensuring compliance with the 2010 CAAP's Clean Truck Program engine emissions requirements. This document assumes that only marine cargo, i.e., direct intermodal cargo, would be handled at the facility.

The facility would operate like a circuit. Drayage trucks would arrive at and depart from the facility hauling shipping containers on chassis. At full capacity an average of approximately 5,542 trucks, carrying 4,167 containers, would arrive at and depart from the facility each day, as well as employee and vendor traffic. Drayage would occur along designated truck routes to avoid residential areas, which would be enforced through BNSF's drayage contracts by requiring GPS units. Inbound **t**rucks would enter the SCIG railyard from the PCH off-ramps and proceed through an automated inspection and identification process before being directed to trackside where their containers would be unloaded by the RMG cranes either directly to a railcar or onto a container stack. Most empty trucks would then be directed to another trackside spot to be loaded by another RMG with an outbound container, although in some cases a truck might leave the facility empty.

At full operation, the SCIG railyard is expected to handle eight inbound and eight outbound trains per day. The trains would enter and leave the facility via the Alameda Corridor. Consistent with CAAP Measure RL-2 and pursuant to the 2005 California Air Resources Board (CARB) Memorandum of Understanding, BNSF would maximize the use of ultra-low sulfur diesel (ULSD) fuel in the locomotives that would haul the trains. Inbound trains would exit the Alameda Corridor, proceed across the Dominguez Channel Bridge onto one of the facility's south lead tracks, and be routed onto a clear unloading (strip) track. Trains would typically be longer than a single strip track, and would have to be divided into two smaller segments (blocks) in order to be positioned on the strip tracks for loading and unloading. Outbound trains would be assembled ("built") and leave the facility in essentially the reverse process. Locomotive movements within the railyard and along the north lead track would not require the locomotives to sound their horns, as warning devices such as lights and barriers to prevent rail/truck conflicts would eliminate the need for horns.

The proposed Project would provide BNSF with the capacity to handle an estimated 1.5 million containers (2.8 million TEUs (Twenty-foot-Equivalent Units, a measure of containerized cargo based on a standard twenty-foot-long container; because containers come in several sizes, the conversion factor between number of containers and TEUs is roughly 1.85)) per year at full operation and would involve approximately 2 million truck trips between the facility and port terminals per year. The truck trips would replace truck trips that would otherwise go to the BNSF Hobart/Commerce Yard in East Los Angeles, a journey of 24 miles each way. The proposed facility would incorporate an operational model that emphasizes the efficient movement of trucks and trains by incorporating design elements to enhance fluidity of operations and providing direct rail access to the Alameda Corridor, thereby increasing the benefits expected from the Alameda Corridor's use.

Monitoring and Reporting Procedures

Mitigation measures will be implemented in accordance with this MMRP. Lease measures and project conditions of approval have also been incorporated into this MMRP for reporting and tracking purposes. Construction bid specifications shall include all applicable construction mitigation measures, lease measures, and project conditions of approval and the contractor(s) work plans shall be provided to LAHD Environmental Management Division (LAHD/EMD) for review and approval. Operational mitigation measures, lease measures, and project conditions of approval will be included in leases, permits and agreements with BNSF and tenants at the alternate business sites and monitored by LAHD/EMD and any specified responsible parties designated by LAHD/EMD.

This MMRP for the proposed Project will be in place through all phases of the project, including design, construction, and operation, and will help ensure that project objectives are achieved. The LAHD shall be responsible for administering the MMRP and ensuring that all parties comply with its provisions. The LAHD may delegate monitoring activities to staff, consultants, or contractors. The LAHD will ensure that monitoring is documented through periodic reports and that deficiencies are promptly corrected. The designated environmental monitor will track and document compliance with mitigation measures such as through mitigation monitoring forms and other compliance recordkeeping and/or reporting documentation, note any problems that may result, and take appropriate action to rectify problems.

Mitigation Monitoring and Reporting Program Implementation

This MMRP identifies each mitigation measure by discipline, the entity (organization) responsible for its implementation, and the report/permit/certification required for each measure. Certain inspections and reports may require preparation by qualified individuals, and these are specified as needed. The timing and method of verification for each measure is also specified.

Section 2

Mitigation Monitoring and Reporting Program

Summary List

The following is a brief summary list of all mitigation measures organized by the entity responsible for implementation. The LAHD is responsible for administering the MMRP and ensuring that all parties comply with its provisions. The methods for complying with the mitigation measures, timing, and reporting and documentation procedures are described in detail in the MMRP Table 2-1.

Responsible Entity: BNSF

Mitigation Measure and Lease Measure
MM AQ-1. Fleet Modernization for Off-Road Equipment.
MM AQ-2. Fleet Modernization for On-Road Trucks.
MM AQ-3. Additional Fugitive Dust Control.
MM AQ-4. Best Management Practices.
MM AQ-5. General Mitigation Measure.
MM AQ-6. Special Precautions near Sensitive Sites.
MM AQ-7: On-Site Sweeping at SCIG Facility
MM AQ-8. Low-Emission Drayage Trucks.
MM AQ-9: Periodic Review of New Technology and Regulations.
MM AQ-10: Substitution of New Technology.
MM BIO-1a: Migratory Non-Game Native Bird Species
MM BIO-1b: Bat Roosting Habitat
MM CR-1: Archaeological or Ethnographic Resources
MM CR-2: Sepulveda Boulevard Bridge - Documentation and Interpretive Display
MM CR-3: Sepulveda Boulevard Bridge – Structure Salvaging Plan
MM CR-4: Paleontological Resource
MM GHG-1: Idling Restriction and Electrification for Construction Equipment.

Mitigation Measure and Lease Measure
MM GHG-2: Solar Panels.
MM GHG-3: Recycling.
MM GHG-4: Tree Planting.
MM GHG-5: Water Conservation.
MM GHG-6: Energy Efficient Light Bulbs.
MM GHG-7: Energy Audit.
MM GHG-8: Solar Canopy on Parking Area.
MM GHG-9: Alternate Fuel Service Trucks.
MM GHG-10: Carbon Offsets.
LM RISK-1 Site Remediation Lease Measure.
LM RISK-2 Contamination Contingency Plan Lease Measure.
MM NOI-1: Construction of 12-Foot Sound Wall.
MM NOI-2: Construction Noise Measures.
MM NOI-3: Construction of 24-Foot Sound Wall.
MM PS-1: Recycling of Construction Materials
MM PS-2: Materials with Recycled Content
MM PS-3: Solid Waste Management
MM WR-1: Dominguez Channel Railroad Bridge

Responsible Entity: Alternate Business Location Tenants

Mitigation Measure and Lease Measure
MM AQ-1. Fleet Modernization for Off-Road Equipment.
MM AQ-2. Fleet Modernization for On-Road Trucks.
MM AQ-3. Additional Fugitive Dust Control.
MM AQ-4. Best Management Practices.
MM AQ-5. General Mitigation Measure.
MM AQ-6. Special Precautions near Sensitive Sites.
MM BIO-1a: Migratory Non-Game Native Bird Species
MM CR-1: Archaeological or Ethnographic Resources
MM CR-4: Paleontological Resource
MM GHG-1: Idling Restriction and Electrification for Construction Equipment.
MM GHG-2: Solar Panels.
MM GHG-3: Recycling.
MM GHG-5: Water Conservation.
MM GHG-6: Energy Efficient Light Bulbs.
MM GHG-7: Energy Audit.
LM RISK-1 Site Remediation Lease Measure.
LM RISK-2 Contamination Contingency Plan Lease Measure.
MM NOI-2: Construction Noise Measures.
MM PS-1: Recycling of Construction Materials
MM PS-2: Materials with Recycled Content
MM PS-3: Solid Waste Management

Table 2-1. Mitigation and Lease Measures Monitoring and Reporting Program Summary for the SCIG Project

Mitigation Measure and Lease Measure	Timing and Methods	Responsible Parties
Aesthetics		
For mitigation measures that address significant impacts under Impact AES-1, see Mitigation Measures MM CR-2 and MM CR-3, below, under Cultural Resources.		
Air Quality		
MM AQ-1. Fleet Modernization for Off-Road Equipment. 1. Construction equipment shall incorporate, where feasible, emissions savings technology such as hybrid drives and specific fuel economy standards. 2. Idling shall be restricted to a maximum of 5 minutes when not in use. 3. Tier Specifications: a. From January 1, 2012, to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 hp, except marine vessels and harbor craft, will meet Tier-3 off-road emission standards at a minimum. In addition, all construction equipment greater than 50 hp will be retrofitted with a CARB-verified Level 3 DECS. Per Port's Construction Guidelines, for CEQA Project, in 2012 to 2014, construction equipment shall meet 50% Tier 3 Level 3, 20% Tier 2 Level 3, 10% Tier 1 Level 3, 10% Tier 2 Level 2, and 10% Tier 1 Level 2. b. Post-January 1, 2015 on: All off-road diesel-powered construction equipment greater than 50 hp, except marine vessels and harbor craft, will meet Tier-4 off-road emission standards at a minimum. Per Port's Construction Guidelines, for CEQA Project, in 2015 and going forward, construction equipment shall meet 50% Tier 4, Tier 3 Level 3, 20% Tier 3 Level 3, 10% Tier 1 Level 3, 10% Tier 2 Level 2, and 10% Tier 1 Level 2.	**Timing:** Prior to and during construction. **Methods:** This measure shall be incorporated into BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impacts of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by BNSF and Tenants prior to beginning any construction activity. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications. The construction equipment measures shall be met, unless one of the following circumstances exist and the contractor is able to provide proof that any of these circumstances exists: • A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement. • A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

	• A contractor has ordered a control device for a piece of equipment planned for use on the project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease.	
MM AQ-2. Fleet Modernization for On-Road Trucks.	**Timing:** Prior to and during construction.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors
1. Trucks hauling materials such as debris or fill shall be fully covered while operating off Port property. This is not quantified in the mitigated construction emissions. 2. Idling shall be restricted to a maximum of 5 minutes when not in use. This is not quantified in the mitigated construction emissions. 3. USEPA Standards (These standards were not quantified in the RDEIR; however, further reductions are expected.) • For On-road trucks with a gross vehicle weight rating (GVWR) of at least 19,500 pounds: Comply with USEPA 2010 on-road emission standards for PM10 and NOx (0.01 grams per brake horsepower-hour (g/bhp-hr) and 0.2 g/bhp-hr or better, respectively). A copy of each unit's certified EPA rating and each unit's CARB or SCAQMD operating permit, will be provided at the time of mobilization of each applicable unit of equipment.	**Methods:** This measure shall be incorporated into BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impacts of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by BNSF and Tenants prior to beginning any construction activity. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications.	**Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

MM AQ-3. Additional Fugitive Dust Control. The calculation of fugitive dust (PM) from Project earth-moving activities assumes a 69 percent reduction from uncontrolled levels to simulate rigorous watering of the site and use of other measures (listed below) to ensure Project compliance with SCAQMD Rule 403. The Project construction contractor shall submit a fugitive dust control plan or notification to SCAQMD (for construction sites greater than 50 acres) The construction contractor shall further reduce fugitive dust emissions to 90 percent from uncontrolled levels. The following measures to reduce dust should be implemented and/or included in the contractor's fugitive dust control plan: · SCAQMD's Best Available Control Technology (BACT) measures must be followed on all projects. They are outlined on Table 1 in Rule 403. Large construction projects (on a property which contains 50 or more disturbed acres) shall also follow Rule 403 Tables 2 and 3. · Active grading sites shall be watered three times per day. · Contractors shall apply approved non-toxic chemical soil stabilizers to all inactive construction areas or replace groundcover in disturbed areas. · Contractors shall provide temporary wind fencing around sites being graded or cleared. · Trucks hauling dirt, sand, or gravel shall be covered or shall maintain at least 2 feet of freeboard in accordance with Section 23114 of the California Vehicle Code. ("Spilling Loads on Highways"). · Construction contractors shall install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site. · The grading contractor shall suspend all soil disturbance activities when winds exceed 25 mph or when visible dust plumes emanate from a site; disturbed areas shall be stabilized if construction is delayed. · Open storage piles (greater than 3 feet tall and a total surface area of 150 square feet) shall be covered with a plastic	**Timing:** Prior to and during construction. **Methods:** This measure shall be incorporated into the BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impact of fugitive dust (PM10) emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by BNSF and Tenants prior to beginning any construction activity. The contractor(s) shall adhere to these specifications throughout construction activities. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

tarp or chemical dust suppressant. · Stabilize the materials while loading, unloading and transporting to reduce fugitive dust emissions. · Belly-dump truck seals should be checked regularly to remove trapped rocks to prevent possible spillage. · Comply with track-out regulations and provide water while loading and unloading to reduce visible dust plumes. · Waste materials should be hauled off-site immediately. · Pave road and road shoulders where available. · Traffic speeds on all unpaved roads shall be reduced to 15 mph or less. · Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow. · Schedule construction activities that affect traffic flow on the arterial system to off-peak hours to the extent practicable. · Require the use of clean-fueled sweepers pursuant to SCAQMD Rule 1186 and Rule 1186.1 certified street sweepers. Sweep streets at the end of each day if visible soil is carried onto paved roads on-site or roads adjacent to the site to reduce fugitive dust emissions. · Appoint a construction relations officer to act as a community liaison concerning on-site construction activity including resolution of issues related to PM10 generation.		

MM AQ-4. Best Management Practices. The following measures are required on construction equipment (including onroad trucks): · Use diesel oxidation catalysts and catalyzed diesel particulate traps. · Maintain equipment according to manufacturers' specifications. · Restrict idling of construction equipment to a maximum of 5 minutes when not in use. · Install high-pressure fuel injectors on construction equipment vehicles. LAHD shall implement a process by which to select additional BMPs to further reduce air emissions during construction. The LAHD shall determine the BMPs once the contractor identifies and secures a final equipment list.	**Timing:** Prior to and during construction. **Methods:** This measure shall be incorporated into BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impacts of construction diesel emissions. The LAHD shall determine the BMPs once the contractor(s) identifies and secures a final equipment list. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction manager or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division
MM AQ-5. General Mitigation Measure. For any of the above mitigation measures, if a CARB-certified technology becomes available and is shown to be equal or more effective in terms of emissions performance than the existing measure, the technology could replace the existing measure pending approval by the LAHD.	**Timing:** Prior to and during construction. **Methods:** This measure shall be incorporated into the BNSF's and Tenants' bid and contract specifications approved by LAHD. The contractor(s) shall submit a plan for review and approval by BNSF and Tenants prior to beginning any construction activity, which would include any proposed new technology.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors. **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division
MM AQ-6. Special Precautions near Sensitive Sites. When construction activities are planned within 1,000 feet of sensitive receptors (defined as schools, playgrounds, day care centers, and hospitals), the construction contractor shall notify each of these sites in writing at least 30 days before construction activities begin.	**Timing:** Prior to and during construction. **Methods:** This measure shall be incorporated into the BNSF's and Tenants' bid and contract specifications approved by LAHD for all construction activity. The contractor(s) shall submit for review and approval by BNSF and Tenants prior to beginning of any construction activity, a plan to notify sensitive receptors.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

MM AQ-7: On-Site Sweeping at SCIG Facility BNSF shall sweep the SCIG facility on-site, along routes used by drayage trucks, yard hostlers, service trucks and employee commuter vehicles, on a weekly basis using a commercial street sweeper or any technology with equivalent fugitive dust control.	**Timing:** During Project operation. **Methods:** This measure shall be incorporated into the lease agreement. Biannual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions
MM AQ-8. Low-Emission Drayage Trucks. This proposed measure would require drayage trucks calling on the SCIG facility to meet an emission reduction in diesel particulate matter emissions (DPM) of 95% by mass relative to the federal 2007 on-road heavy-duty diesel engine emission standard ("low-emission" trucks). The requirement for the percentage of trucks calling on the SCIG facility to be low-emission trucks is as follows: 10 percent in 2016; 12 percent in 2017; 15 percent in 2018; 20 percent in 2019; 25 percent in 2020; 35 percent in 2021; 50 percent in 2022; 75 percent in 2023; 80 percent in 2024; 85% in 2025; and 90 percent in 2026 and beyond. BNSF will be required to specify in their drayage contracts that all drayage trucks calling on the SCIG facility shall use dedicated truck routes and GPS devices and shall meet the requirements specified above and will incorporate the fleet mix into the operations by the end of the specified years through the term of the lease. BNSF will be required to install Radio-Frequency Identification (RFID) readers to control access at the gate to the SCIG facility. Truck logs and throughput volume will be provided to the LAHD Environmental Management Division for tracking and reporting. In the event that throughput volume at the SCIG facility increases beyond the levels that were analyzed for any specific future year, the LAHD will determine if the phase-in schedule must be accelerated beyond that described above.	**Timing:** During Project operation. **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the POLA Executive Director.	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions

MM AQ-9: Periodic Review of New Technology and Regulations. The Port shall require the business to review, in terms of feasibility, any Port-identified or other new emissions-reduction technology, and report to the Port. Such technology feasibility reviews shall take place at the time of the Port's consideration of any lease amendment or facility modification for the Project site. If the technology is determined by the Port to be feasible in terms of cost, technical and operational feasibility, the business shall implement such technology. Potential technologies that may further reduce emission and/or result in cost-savings benefits for the business may be identified through future work on the CAAP. Over the course of the lease, the business and the Port shall work together to identify potential new technology. Such technology shall be studied for feasibility, in terms of cost, technical and operational feasibility. As partial consideration for the Port agreement to issue the permit to the business, the business shall implement not less frequently than once every five (5) years following the effective date of the permit, new air quality technological advancements, subject to mutual agreement on operational feasibility and cost sharing, which shall not be unreasonably withheld. The effectiveness of this measure depends on the advancement of new technologies and the outcome of future feasibility or pilot studies.	**Timing:** During Project operation. **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the POLA Executive Director.	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions
MM AQ-10: Substitution of New Technology. If any kind of technology becomes available and is shown to be as good or as better in terms of emissions reduction performance than an existing measure, the technology could replace the existing measure pending approval by the Port. The technology's emissions reductions must be verifiable through USEPA, CARB, or other reputable certification and/or demonstration studies to the Port's satisfaction	**Timing:** During operation. **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the Executive Director.	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions

Biological Resources		
MM BIO-1a: Migratory Non-Game Native Bird Species Should tree or vegetation removal, or bridge replacement and renovation, occur within the BSA during the breeding season for migratory non-game native bird species (generally March 1 – September 1 but as early as February 15 and as late as September 15 for raptors), weekly bird surveys shall be conducted to detect any protected native birds in the vegetation to be removed and other suitable nesting habitat within 300 feet of the construction work area (500 feet for raptors). The surveys shall be conducted 30 days prior to the disturbance of suitable nesting habitat by a qualified biologist with experience in conducting nesting bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than 3 days prior to the initiation of clearance/construction work. If a protected native bird is found, the Operator shall delay all clearance/ construction activities within 300 feet of nesting habitat (within 500 feet for raptor nesting habitat) until August 31 or continue surveys in order to locate any nests. If an active nest is located, clearing and construction within 300 feet of the nest (within 500 feet for raptor nests) will be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting. Limits of construction to avoid a nest shall be established in the field with flagging and stakes or construction fencing. Construction personnel will be instructed on the sensitivity of the area. The results of this measure shall be recorded to document compliance with applicable State and Federal laws pertaining to the protection of native birds.	**Timing:** Prior to Project construction (focused biological surveys of nesting) and during Project construction (2013-2015) **Methods:** This measure shall be incorporated into the BNSF's and Tenants' bid and contract specifications approved by LAHD for all construction work to ensure contractor(s) are aware of potential work area limitations. The contractor(s) shall adhere to these specifications throughout construction activities. Biologists will survey site for active bird nests of native bird species, and for roosting bats. If nests and/or roosting bats are present, a protection barrier or protection zone, as described in the MMBIO-1a and MM BIO-1b, shall be established, and construction will avoid those sites. The protection barrier or zone will remain until a qualified biologist determines that the young have fledged or the nest or roosting is no longer active. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management, Construction Management, and Real Estate Divisions

MM BIO-1b: Bat Roosting Habitat	**Timing:** Prior to Project construction (focused biological surveys of bats), during Project construction (2013-2015), and after Project construction (post-construction survey of bats)	**Implementation:** BNSF through Construction Contractors
The following activities shall be required with regard to bat roosting habitat: a. Prior to construction, a qualified biologist shall conduct three focused bat surveys between March and November to conclude presence/absence of roosting bats within Pacific Coast Highway Bridge and Dominguez Channel Bridge. A pre-construction survey for roosting bats shall be performed within 30 days prior to removal of palms within the BSA. If no active roosts are found, then no further action will be needed. If either a maternity roost or hibernacula (structures used by bats for hibernation) is present, the measures below will be implemented to avoid and reduce impacts to roosting bats; b. Prior to the anticipated bat roosting season (March to November) exclusionary devices will be installed. Installation of these devices will be completed prior to February 1 (beginning of bird breeding season) and will remain until construction is completed. A pre-clearance survey will be conducted at least one day prior to installing exclusionary devices to determine if bats are present. Exclusionary devices installed will include plastic sheeting, plastic or wire mesh, expanding foam, or plywood sheets. A pre-construction survey will also be completed at least one week prior to construction to verify exclusionary devices are successful and no bats are present. If bats are detected, an agency-approved bat biologist will be consulted to discuss additional measures to exclude bats. c. If active maternity roosts or hibernacula are found in trees or structures to be removed or renovated as part of project construction, the project should be redesigned to avoid the loss of the occupied roost if it is possible to do so. If an active maternity roost is located and the project cannot be redesigned to avoid removal of the occupied palm or structure, demolition should commence before maternity colonies form (i.e., prior to March 1) or after young are flying,	**Methods:** This measure shall be incorporated into the BNSF's bid and contract specifications approved by LAHD for all construction work to ensure contractor(s) are aware of potential work area limitations. The contractor(s) shall adhere to these specifications throughout construction activities. Biologists will survey site for active bird nests of native bird species, and for roosting bats. If nests and/or roosting bats are present, a protection barrier or protection zone, as described in the MMBIO-1a and MM BIO-1b, shall be established, and construction will avoid those sites. The protection barrier or zone will remain until a qualified biologist determines that the young have fledged or the nest or roosting is no longer active. Enforcement shall include oversight by BNSF's project/construction managers.	**Monitoring and Reporting:** LAHD, Environmental Management, and Real Estate Divisions

i.e., after July 31). Disturbance-free buffer zones as determined by a qualified biologist in consultation with CDFG should be observed during the maternity roost season (March 1 – July 31). d. If a non-breeding bat hibernacula is found in a structure scheduled for removal, the individuals should be safely evicted, under the direction of a qualified biologist (as determined by a MOU to be negotiated with CDFG), by opening the roosting area to allow airflow through the cavity. Demolition will take place at least one night after initial disturbance for airflow. This action should allow bats to leave during darkness, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. Structures with roosts that need to be removed will first be disturbed at dusk, just prior to removal that same evening, to allow bats to escape during the darker hours. e. During bridge construction, alternate bat habitat (e.g., large bat houses) suitable for these species will be provided and installed prior to the roosting season (March to November), in coordination with a qualified biologist, CDFG, and the City of Los Angeles. The design of the alternate bat habitat will be approved by a wildlife biologist familiar with bat roosting requirements. The acceptance of artificial roosts appears to have a higher success rate if the artificial habitat is treated with guano. Guano shall be collected immediately after the bats have vacated the roost in order to maximize the collection of guano. Upon construction of artificial habitat features or artificial structures, they will be treated with an application of guano slurry to maximize their potential for use by bats returning to roost in the bridge. f. Use of the bat alternate habitat will be monitored by a bat specialist every 2 weeks. During the known annual monitoring period (March to November) a determination will be made on the bats' use of the alternate habitat, which species are present, and the duration of use. If no bats are found to use the alternate habitat by April 31, surveys in the vicinity of the previously occupied bridge will be conducted to determine if bats have relocated to establish another roosting location. A bat specialist will be consulted to		

determine the limits of this survey area. If no bats are found within the area, it will be assumed they have relocated to an area outside of the vicinity of the bridge or palms, and no additional mitigation shall be required. g. Bridge design will incorporate suitable bat habitat. The bridge design will include roughened concrete and incorporate appropriately sized (0.75 to 1.25 inches wide, at least 12 inches deep) longitudinal crevices. A post-construction survey conducted during the bat roosting season (March to November) will be required to ensure success of the new bat habitat within the restored bridge.		
Cultural Resources		
MM CR-1: Archaeological or Ethnographic Resources An archaeological monitor shall be present during all initial grading and excavation activities at the proposed Project site. In the event any cultural resources are encountered during earthmoving activities, the construction contractor shall cease activity in the affected area until the discovery can be evaluated by a qualified archaeologist in accordance with the provisions of CEQA §15064.5. The archaeologist shall complete any requirements for the mitigation of adverse effects on any resources determined to be significant and implement appropriate treatment measures. The treatment plan may include methods for: (1) subsurface testing after demolition of existing buildings, (2) data recovery of archaeological or ethnographic deposits, and (3) post-construction documentation. A detailed historic context that clearly demonstrates the themes under which any identified subsurface deposits would be determined significant would be included in the treatment plan, as well as anticipated artifact types, artifact analysis, report writing, repatriation of human remains and associated grave goods, and curation. A preconstruction information and safety meeting should be held to make construction personnel aware of archaeological monitoring procedures and the types of archaeological resources that might be encountered. All construction equipment operators shall attend a pre-construction meeting	**Timing:** Prior to Project construction (preconstruction information safety meeting) and during Project construction (2013-2015) **Methods:** To avoid or reduce this potential impact, BNSF and Tenants shall retain a qualified archaeologist and notify applicable Tribal representatives. This measure shall be incorporated into the BNSF's and Tenants' bid and contract specifications approved by LAHD for all construction work to ensure contractor(s) are aware of potential work area limitations. The Construction Manager(s)/Contractor(s) shall instruct construction personnel as part of normal construction procedures to halt/redirect construction activities if any materials are uncovered that are suspect of being associated with historical or prehistoric occupation. If materials are found, the construction contractor(s) shall contact the Construction Manager, Environmental Management Division, and archeologist.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management, Construction Management Divisions

presented by a professional archaeologist retained by LAHD that shall review types of cultural resources and artifacts that would be considered potentially significant, to ensure operator recognition of these materials during construction. Human Remains: Prior to beginning construction, applicable Native American groups (e.g., the Gabrieliño-Tongva Tribal Council) will be consulted regarding proposed ground-disturbing activities and offered an opportunity to monitor the construction along with the project archeologist. If human remains are encountered, there shall be no further excavation or disturbance of the site within 100 feet of the find or any nearby area reasonably suspected to overlie adjacent human remains. The Los Angeles County Coroner shall be contacted to determine the age and cause of death of the deceased. If the remains are not of Native American heritage, construction in the area may recommence after authorized by the coroner. If the remains are determined to be Native American, state laws relating to the disposition of Native American burials that fall within the jurisdiction of the NAHC (PRC §5097) will be implemented by the appropriate parties, which includes contacting the NAHC to determine the most likely living descendant(s) and identifying a mutually acceptable strategy for treating and disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC§5097.98. If the NAHC is unable to identify a most likely descendant, the descendant fails to make a recommendation within 24 hours of being notified by the NAHC and LAHD and the descendant are not capable of reaching a mutually acceptable strategy through mediation by the NAHC, the Native American human remains and associated grave goods shall be reburied with appropriate dignity on the proposed Project site in a location not subject to further subsurface disturbance.		

MM CR-2: Sepulveda Boulevard Bridge - Documentation and Interpretive Display Prior to the start of construction of the new Sepulveda Boulevard railroad bridge, BNSF will prepare archival documentation and an interpretative display of the historical resource. **Documentation:** A Historic American Engineering Record (Level II or less) will be prepared to provide a physical description of the historic bridge, discuss its significance under applicable CRHR criteria, and address the historical context for its construction, purpose, and function. Large-format black and white photographs will be taken showing the Sepulveda Boulevard Bridge in context, as well as details of its historic engineering features. The photographs will be fully captioned and processed for archival permanence. Copies of the report will be offered to the local historical society and any other repository or organization determined by LAHD. **Interpretive Display:** An interpretive exhibit, in the form of a permanent plaque, will be prepared that provides a brief history of the structure, a description of its engineering features and characteristics, and the reasons for and date of its demolition and replacement, and once construction of the new bridge is complete, the plaque will be installed at the bridge site.	**Timing:** During Project construction (2013-2015) **Methods:** This measure shall be incorporated into the BNSF's bid and contract specifications approved by LAHD to develop an archival documentation and an interpretative display of the historical bridge. The contractor shall adhere to these requirements. Enforcement shall include oversight by the BNSF project/construction manager or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division
MM CR-3: Sepulveda Boulevard Bridge – Structure Salvaging Plan Prior to the start of the Sepulveda Bridge component of the proposed Project, BNSF shall prepare a plan for salvaging noteworthy elements of the structure for re-use either elsewhere or in the new bridge. The plan shall identify the elements to be salvaged, which shall be determined in consultation with a qualified architectural historian. Suitable re-use would include as decorative elements either on the new bridge or elsewhere in the region, or as an interpretive display. The plan shall be approved by LAHD, and the existing bridge and abutments shall not be demolished or altered until said approval has been granted.	**Timing:** During t Project construction (2013-2015) **Methods:** This measure shall be incorporated into the BNSF's bid and contract specifications approved by LAHD to develop and implement a structure salvaging plan of the historical bridge. The contractor shall adhere to these requirements. Enforcement shall include oversight by the BNSF project/construction manager or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division

MM CR-4: Paleontological Resource Paleontological monitoring of ground disturbing activities shall be conducted by a qualified paleontologist. Ground disturbing activities include, but are not limited to, pavement/asphalt removal, boring, trenching, grading, excavating, and the demolition of building foundations. A preconstruction information and safety meeting will be required to make construction personnel aware of paleontological monitoring procedures and paleontological sensitivity. In the event that paleontological resources are encountered, the contractor shall stop construction within 10 meters (30 feet) of the exposure. A qualified paleontologist will evaluate the significance of the resource. Additional monitoring recommendations may be made at that time. If the resource is found to be significant, the paleontologist shall systematically remove and stabilize the specimen in anticipation of its preservation. Curation of the specimen shall be in a qualified research facility, such as the Los Angeles County Natural History Museum.	**Timing:** During Project construction (2013-2015) **Methods:** To avoid or reduce this potential impact, BNSF shall retain a qualified paleontologist. This measure shall be incorporated into the BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to ensure contractor(s) are aware of potential work area limitations. The Construction Manager(s)/Contractor(s) shall instruct construction personnel as part of normal construction procedures to halt/redirect construction activities if any materials are uncovered that are suspect of being associated with paleontological resources. If materials are found, the construction contractor shall contact the Construction Manager, LAHD Environmental Management Division, and paleontologist.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management, Construction Management Divisions
Greenhouse Gas - Climate Change		
MM GHG-1: Idling Restriction and Electrification for Construction Equipment. Construction equipment idling will be restricted to a maximum of 5 minutes when not in use and when feasible, and the use of electrified construction equipment where feasible.	**Timing:** Prior to and during Project construction. **Methods:** This measure shall be incorporated into BNSF's and Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impact of construction emissions. The contractor(s) shall adhere to these specifications throughout construction activities. Enforcement shall include oversight by the BNSF and Tenants' project/construction manager(s) or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management, Construction Management Divisions

MM GHG-2: Solar Panels. The Port shall require installation of solar panels on all buildings constructed on POLA property where feasible. The Port, in consultation with the Tenant, will undertake a feasibility review and will make a determination as part of the Businesses final design on the solar panel requirement.	**Timing:** Prior to and during Project construction. **Methods:** This measure shall be incorporated into BNSF's and Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impact of construction emissions. The contractor(s) shall adhere to these specifications throughout construction activities. Enforcement shall include oversight by the BNSF and Tenants' project/construction manager(s) or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management, Engineering, and Construction Management Divisions
MM GHG-3: Recycling. The tenant shall ensure a minimum of 40 percent of all waste generated during project construction is recycled and 70 percent of all waste generated in all buildings is recycled by the facility opening year of 2016 and 100 percent is recycled by 2025. The goals for operational recycling are consistent with, but more ambitious, than the City of Los Angeles Bureau of Sanitation's Solid Resources Citywide Recycling Division's goal of 70 percent waste diversion by 2020 (Bureau of Sanitation, 2000) and RENEW LA's goal of 90 percent by 2025 (RENEW LA, 2005). Recycled materials shall include: (a) white and colored paper; (b) post-it notes; (c) magazines; (d) newspaper; (e) file folders; (f) all envelopes including those with plastic windows; (g) all cardboard boxes and cartons; (h) all metal and aluminum cans; (i) glass bottles and jars; and; (j) all plastic bottles.	**Timing:** During Project operation. **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF and Alternate Business Location Tenants **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions

MM GHG-4: Tree Planting. The applicant shall plant shade trees around the main administration building and the tenant shall maintain all trees through the life of the lease.	**Timing:** Prior to and during construction and throughout Project operation. **Methods:** This measure shall be incorporated into BNSF's design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction manager or designated building inspectors to ensure compliance with contract specifications. This measure shall also be incorporated into the lease agreements for ongoing maintenance. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF through Construction Contractor, and BNSF **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division
MM GHG-5: Water Conservation. As part of the facility construction, the tenant shall install a water recirculation system at potential wash racks, install low-flow devices in new buildings and low irrigation landscaping, and maintain these through the life of the lease.	**Timing:** Prior to and during Project construction and throughout Project operation. **Methods:** This measure shall be incorporated into BNSF's and Alternate Business Location Tenants' design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Alternate Business Location Tenants' project/construction manager or designated building inspectors to ensure compliance with contract specifications. This measure shall also be incorporated into the lease agreements for ongoing maintenance. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. .	**Implementation:** BNSF and Alternate Business Location Tenants through Construction Contractor, and BNSF **Monitoring and Reporting:** LAHD, Environmental Management Division, Engineering, and Construction Management Divisions

MM GHG-6: Energy Efficient Light Bulbs. In addition to the SCIG facility main administration building, which would be LEED certified, all other interior buildings shall exclusively use energy efficient light bulbs (compact florescent, LED, or other equally efficient) for ambient lighting. The Tenants on their alternate locations on Port-owned property shall also maintain and replace any Port-supplied energy efficient light bulbs. CFL and LED bulbs produce less waste heat and use substantially less electricity than incandescent light bulbs.	**Timing:** Prior to and during Project construction and throughout Project operation. **Methods:** For newly constructed buildings, this measure shall be incorporated into BNSF's and Tenants' design and bid and contract specifications. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications. For all buildings: This measure shall be incorporated into the lease agreements and shall be implemented initially by LAHD, and thereafter by the tenant. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF and Tenants through Construction Contractor, and BNSF and Tenants **Monitoring and Reporting:** LAHD, Environmental Management, Construction Management and Real Estate Divisions
MM GHG-7: Energy Audit. The Tenant shall conduct a third party energy audit every 5 years and install innovative power saving technology where feasible, such as power factor correction systems and lighting power regulators. Such systems help to maximize usable electric current and eliminate wasted electricity, thereby lowering overall electricity use.	**Timing:** Prior to and during Project construction and throughout Project operation (every five years). **Methods:** This measure shall be incorporated into BNSF's and Tenants' design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction manager or designated building inspectors to ensure compliance with contract specifications. This measure shall also be incorporated into the lease agreements. A compliance report shall be supplied to the LAHD Environmental Management Division within six months of every energy audit. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF and Tenants through Construction Contractor, and BNSF **Monitoring and Reporting:** LAHD, Environmental Management, and Real Estate Divisions

MM GHG-8: Solar Canopy on Parking Area. The Tenant shall construct a canopy or canopies over the employee parking area at the SCIG facility that shall be equipped with photovoltaic (PV) solar panels for generating on-site electrical power.	**Timing:** Prior to and during Project construction and throughout Project operation. **Methods:** This measure shall be incorporated into BNSF's design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction manager or designated building inspectors to ensure compliance with contract specifications. This measure shall also be incorporated into the lease agreements for ongoing maintenance. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. .	**Implementation:** BNSF through Construction Contractor, and BNSF **Monitoring and Reporting:** LAHD, Environmental Management, and Real Estate Divisions
MM GHG-9: Alternate Fuel Service Trucks. The Tenant shall utilize only alternate-fuel service trucks within the SCIG facility.	**Timing:** During Project operation. **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions
MM GHG-10: Carbon Offsets. The Tenant shall offset 100% of projected on-site electricity consumption at the SCIG facility over the 50-year lease term from 2016 through 2066, and thus reduce GHG emissions by 117,918 metric tons CO2e through the purchase of carbon offsets such as those available from the California Climate Action Registry's Climate Action Reserve. In addition, when new GHG emission reduction technology becomes available, it will be reviewed under the same process as MM AQ-9 which requires periodic reviews of emissions-reduction technology and implementation into SCIG operations once the technology is determined to be feasible.	**Timing:** During Project operation. **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the Executive Director	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions

Hazards and Hazardous Materials (Note: These lease measures are not mitigation measures under CEQA but are included here for tracking and reporting purposes)		
LM RISK-1 Site Remediation Lease Measure. Unless otherwise directed by the lead regulatory agency for any given site, the Tenant shall remediate all contaminated media within proposed Project boundaries that are encountered and managed during demolition and grading activities. Any discolored and/or odorous soil encountered during excavation shall be handled and disposed in compliance with local, state, and federal regulations, and as directed by the Los Angeles Fire Department, DTSC, and/or RWQCB. Excavated contaminated soil shall not be placed in another location on-site; it must be properly disposed of off-site. All imported soil to be used as backfill in excavated areas should be sampled to ensure that the soil is free of contamination. Current Los Angeles Harbor Department import soil guidance documents must be followed and all import soil must meet criteria as defined in those documents. Unless otherwise authorized by the lead regulatory agency for any given site, areas of soil contamination shall be remediated prior to, or in conjunction with, project demolition, grading, and construction. Existing groundwater contamination encountered during the excavation within the boundary of the proposed Project shall continue to be monitored and remediated, simultaneous and/or subsequent to site redevelopment, in accordance with direction provided by the RWQCB or lead regulatory agency.	**Timing:** Prior to (contingency plan preparation and approval) and during Project construction. **Methods:** BNSF shall prepare a contamination contingency plan approved by LAHD, and the plan shall be included in bid specifications and leasing agreement. Such procedures will be included in any bid specifications for construction or operations personnel, with a copy of such bid specifications to be provided to LAHD, including a completed copy of its operations emergency response plan prior to commencement of construction activities. The contractor(s) shall adhere to these specifications and throughout construction phases.	**Implementation:** BNSF and Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

LM RISK-2 Contamination Contingency Plan Lease Measure. The following contingency plan shall be implemented by the Tenant to address previously unknown contamination during demolition, grading, and construction: a. All excavation and filling operations within the boundaries of the construction area shall be observed for the presence of free petroleum products, chemicals, or otherwise chemically impacted soil (CIS). Deeply discolored soil, suspected contaminated soil, or soil registering greater than 50 ppmv when measured with a photoionization detector (PID) or organic vapor analyzer (OVA) shall be segregated from clean soil. In the event unexpected suspected chemically impacted material (soil or water) is encountered during construction, the contractor shall notify the Los Angeles Harbor Department's Chief Harbor Engineer and Director of Environmental Management (EMD). Harbor Department EMD personnel shall confirm the presence of the suspect material and direct the contractor to remove, stockpile or contain, and characterize the suspect material(s). Continued work at a contaminated site shall require the approval of the Chief Harbor Engineer. b. A photoionization detector (or other similar devices) shall be present during grading and excavation of suspected chemically impacted soil. c. Excavation of VOC-impacted soil (defined as soil which registers a concentration of 50 ppm or greater of Volatile Organic Compounds as measured before suppression materials have been applied and at a distance of no more than three inches from the surface of the excavated soil with an organic vapor analyzer calibrated with hexane) will require the Tenant to obtain and comply with a South Coast Air Quality Management District Rule 1166 permit. d. The remedial option(s) selected shall be dependent upon a number of criteria (including but not limited to types of chemical constituents, concentration of the chemicals, health and safety issues, time constraints, cost, etc.) and shall be determined on a site-specific basis. Both off-site and on-site	**Timing:** Prior to (contingency plan preparation and approval) and during Project construction. **Methods:** BNSF shall prepare a contamination contingency plan approved by LAHD, and the plan shall be included in bid specifications and leasing agreement. Such procedures will be included in any bid specifications for construction or operations personnel, with a copy of such bid specifications to be provided to LAHD, including a completed copy of its operations emergency response plan prior to commencement of construction activities. The contractor(s) shall adhere to these specifications and throughout construction phases.	**Implementation:** BNSF and Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

remedial options shall be evaluated. e. The extent of removal actions shall be determined on a site-specific basis. At a minimum, the chemically impacted area(s) within the boundaries of the construction area shall be remediated to the satisfaction of the lead regulatory agency for the site and/or to ensure protection of project workers. The Port Project Manager overseeing removal actions shall inform the contractor when the removal action is complete. f. Copies of hazardous waste manifests or other documents indicating the amount, nature, and disposition of such materials shall be submitted to the Chief Harbor Engineer within 30 days of project completion. g. In the event that contaminated soil is encountered, all on-site personnel handling or working in the vicinity of the contaminated material shall be trained in accordance with Occupational Safety and Health and Administration (OSHA) regulations for hazardous waste operations. These regulations are based on CFR 1910.120 (e) and 8 CCR 5192, which states that "general site workers" shall receive a minimum of 40 hours of classroom training and a minimum of three days of field training. This training provides precautions and protective measures to reduce or eliminate hazardous materials/waste hazards at the work place. h. In cases where potential chemically impacted soil is encountered, a real-time aerosol monitor shall be placed on the prevailing downwind side of the impacted soil area to monitor for airborne particulate emissions during soil excavation and handling activities. All excavations shall be filled with structurally suitable fill material which is free from contamination (i.e., meets the criteria in current LAHD import soil guidance documents).		

Noise		
MM NOI-1: Construction of 12-Foot Sound Wall. Prior to the start of construction of the proposed Project, BNSF shall first construct a permanent 12-foot high soundwall along the easterly right-of-way of the Terminal Island Freeway, from West 20th Street to Sepulveda Boulevard to reduce construction noise. The final height and location of the soundwall shall be verified by an acoustical consultant as part of the final engineering design of the soundwall, prior to construction. Right-of-way acquisition necessary for the soundwall and landscaping shall be the responsibility of BNSF.	**Timing:** Prior to (design and approvals) and during Project construction. **Methods:** This measure shall be incorporated into BNSF's design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction manager or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF through Construction Contractor **Monitoring and Reporting:** LAHD, Environmental Management Division
MM NOI-2: Construction Noise Measures. The contractor shall implement the following control measures during construction of the proposed Project: a) Construction Hours. Limit construction to the hours of 7:00 am to 9:00 pm on weekdays, between 8:00 am and 6:00 pm on Saturdays, and prohibit construction equipment noise anytime on Sundays and holidays as prescribed in the City of Los Angeles Noise Ordinance, except where nighttime construction is necessary on the PCH grade separation. For construction activities that occur within the City of Long Beach (e.g. the North Lead Track construction and sound wall construction), limit construction to the hours of 7:00 am and 7:00 pm on weekdays and between 9:00 am and 6:00 pm on Saturdays, as prescribed in the City of Long Beach Noise Ordinance. b) Construction Days. Do not conduct noise-generating construction activities on weekends or holidays unless critical to a particular activity (e.g., concrete work). c) Temporary Noise Barriers. When construction is occurring within 500 feet of a residence or park, temporary noise barriers (solid fences or curtains) shall be located between noise-generating construction activities and sensitive receptors unless and until the soundwall provided in MM NOI-1 has been built or the construction noise management plan (see (l)	**Timing:** During Project construction. **Methods:** This measure shall be incorporated into BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impacts of construction noise. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by BNSF and Tenants prior to beginning any construction activity. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

below) demonstrates that temporary barriers are not necessary. d) Construction Equipment. Properly muffle and maintain all construction equipment powered by internal combustion engines. e) Idling Prohibitions. Prohibit unnecessary idling of internal combustion engines near noise sensitive areas. f) Equipment Location. Locate all stationary noise-generating construction equipment, such as air compressors and portable power generators, as far as is practical from existing noise sensitive land uses. g) Quiet Equipment Selection. Select quiet construction equipment whenever possible. h) Notification. Notify residents near the proposed Project site and within at least a one mile radius of the Project site of the construction schedule in writing (in both English and Spanish and other languages if necessary) via brochures, mailings, community meetings, and a project website. i) Portable Generators. Avoid the use of portable generators if electricity can be obtained from the local power grid. j) Noise Complaints. Assign a construction liaison to respond to noise complaints. Post contact information at the construction site, in public notices, and on a project website. k) Pile Driving Hours. Restrict pile driving to the hours between 9 AM and 5 PM, Monday through Friday, and from 10 AM to 4 PM on Saturdays. l) A Construction Noise Monitoring and Management Plan for the SCIG facility will be required prior to the commencement. The plan should evaluate each piece of construction equipment and the need for administrative and engineering noise control for each type of construction equipment. A noise monitoring plan should be prepared to document construction noise levels during the process.		

MM NOI-3: Construction of 24-Foot Sound Wall. Prior to the start of construction of the proposed Project, BNSF shall first construct or cause to be constructed a 24-ft high sound barrier as an extension to the existing 24-ft high sound barrier along the easterly right-of-way of the San Pedro Branch rail line north of Sepulveda Blvd, as shown in Figure 3.9-6. The barrier would close the present gap between the existing barrier and a warehouse to the south, removing line-of-sight from the Project site to receiver R1 (the residence at 2789 Webster) and receiver R30 (Stephens Middle School). The final height and location of the soundwall shall be verified by an acoustical consultant as part of the final engineering design of the proposed Project, prior to construction. Right-of-way acquisition necessary for the soundwall and landscaping shall be the responsibility of BNSF.	**Timing:** Prior to (design and approvals) and during Project construction. **Methods:** This measure shall be incorporated into BNSF's design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction manager or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF through Construction Contractor **Monitoring and Reporting:** LAHD, Environmental Management Division
Utilities and Public Services		
MM PS-1: Recycling of Construction Materials Recycling of Construction Materials. Demolition and/or excess construction materials shall be separated onsite for reuse/recycling or proper disposal. During grading and construction, separate bins for recycling of construction materials shall be provided onsite.	**Timing:** During Project construction. **Methods:** This measure shall be incorporated into BNSF's and Tenants' bid and contract specifications approved by LAHD. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division
MM PS-2: Materials with Recycled Content Materials with Recycled Content. Materials with recycled content shall be used in Project construction where feasible. Chippers onsite during construction shall be used to further reduce excess wood for landscaping cover.	**Timing:** During Project construction **Methods:** This measure shall be incorporated into BNSF's and Tenants' bid and contract specifications approved by LAHD. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF and Tenants through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division, Construction Management Division

MM PS-3: S**olid Waste Management** To ensure adequate long-term solid waste management, the proposed Project will be required to comply with policies and standards set forth in the City's Solid Waste Integrated Resources Plan (SWIRP) following 2025.	**Timing:** During Project operation. **Methods:** This measure shall also be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the LAHD Environmental Management Division. Enforcement shall include oversight by the Real Estate Division.	**Implementation:** BNSF and Tenants **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions
Water Resources		
MM WR-1a: Dominguez Channel Railroad Bridge The following measures shall be implemented during the reconstruction of the Dominguez Channel Railroad Bridge 1. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to erosion or could flow into the channel. Construction materials shall not be stored in contact with the soil. 2. Floating booms shall be used to assist in containing debris discharged into Dominguez Channel, and any debris discharged shall be removed as soon as possible but no later than the end of each day. 3. A silt curtain shall be utilized to help control turbidity during reconstruction of the Dominguez Channel Bridge. BNSF shall limit, to the greatest extent possible the suspension of benthic sediments into the water column. Reasonable and prudent measures shall be taken to prevent all discharge of fuel or oily waste from heavy machinery or construction equipment or power tools into the Dominguez Channel. Such measures include deployed oil booms and a silt curtain around the proposed construction zone at all times to minimize the spread of any accidental fuel spills, turbid construction-related water discharge, and debris; training construction workers on emergency spill notification procedures; proper storage of fuels and lubricants; and provisions for on-site spill response kits.	**Timing:** During Project construction. **Methods:** This measure shall be incorporated into BNSF's bid and contract specifications approved by LAHD. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction managers or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF through Construction Contractors **Monitoring and Reporting:** LAHD, Environmental Management Division

Section 3
Construction Traffic Management Plan

The Traffic Management Plan (TMP) is required at the time that construction permits are obtained by BNSF for the SCIG facility or by tenants at Alternate Business Locations. The TMP is not required as a CEQA mitigation measure but is being included in the MMRP based on public comments received on the RDEIR.

Although they are not required as CEQA mitigation measures to reduce significant impacts, the following actions and activities are included for monitoring and reporting under this MMRP, in response to public comments received on the DEIR and/or RDEIR, and because they advance important LAHD environmental goals and objectives.

Table 3-1. Construction Traffic Management Plan for the SCIG Project.

Construction Traffic Management Plan

POLA requires contractors to prepare a detailed traffic management plan for Port projects. A traffic management plan containing traffic control measures conforming to the requirements and guidance of the Los Angeles Department of Transportation (LADOT), Caltrans, and the cities of Carson and Long Beach, would be required at the time construction permits are obtained. At a minimum, the traffic management plan shall contain the following:

- Detour plans
- Coordination with emergency services and transit providers
- Coordination during the entire construction period with surrounding property owners, businesses, residences, and tenants through the establishment of a community construction liaison and public noticing within at least a one mile radius of the project site (in English, Spanish, and other languages if necessary) via brochures, mailings, community meetings, and a project website
- Advanced notification of temporary bus stop loss and/or bus line relocation
- Identification of temporary alternate bus routes
- Advanced notice of temporary parking loss
- Identification of temporary parking replacement or alternate adjacent parking within a reasonable walking distance
- Use of designated haul routes, use of truck staging areas
- Observance of hours of operations restrictions and appropriate signing for construction activities.

The traffic management plan would be implemented for all construction work directly related to the SCIG facility and the PCH grade separation by BNSF and may be required, in whole or in part as deemed necessary by LADOT, for overlapping construction activities at the alternate business sites.

Timing: Prior to and during Project construction.

Method: This measure shall be incorporated into BNSF's and Alternate Business Location Tenants' bid and contract specifications approved by LAHD for all construction work to reduce the impacts of construction traffic. The contractor(s) shall submit a Construction Traffic Management Plan for review and approval by BNSF and Tenants prior to beginning any construction activity. The contractor(s) shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's and Tenants' project/construction managers or designated building inspectors to ensure compliance with contract specifications.

Implementation: BNSF and Alternate Business Location Tenants through Construction Contractors.

Monitoring and Reporting: LAHD, Environmental Management Division

Section 4
Project Conditions Monitoring and Reporting

The following project conditions are recommended for inclusion in the lease, permit and/or development agreements between the LAHD and BNSF for the SCIG facility. These project conditions are not required as CEQA mitigation measures but are important because they advance important LAHD environmental goals and objectives. Each of the conditions adopted by the Board of Harbor Commissioners will be monitored in accordance with the program below.

Table 4-1. **Project Condition Summary for the SCIG Project.**

Project Condition	Timing and Methods	Responsible Parties
Aesthetics		
PC AES-1: Intensive Landscaping on West Side of Terminal Island Freeway BNSF shall, by all means feasible and in good faith, work with the City of Long Beach to obtain long-term access to the land required to construct an area of intensive landscaping on the west side of the Terminal Island Freeway between PCH and Sepulveda Boulevard, including removing existing tenant leases and clearing away existing physical barriers on that land. Access may be by easement, lease, or title, but should be secure for a period of at least 50 years (the operations period of the SCIG facility). If successful, BNSF shall construct the intensive landscaping simultaneously, or as nearly so as practicable, with construction of the SCIG facility during the time period of 2013-2015. The intensive landscaping shall contain native plant tree species, with an established irrigation system and a long-term maintenance plan that would be the responsibility of BNSF. The final landscaping design plan shall be reviewed and approved by the LAHD, the City of Long Beach, and other entities if necessary.	**Timing:** Prior to and during Project construction and throughout Project operation. **Methods:** This measure shall be incorporated into BNSF's design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction manager or designated building inspectors to ensure compliance with contract specifications. This measure shall also be incorporated into the lease agreements for ongoing maintenance. Bi-annual tenant compliance reports shall be supplied to the Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the Executive Director.	**Implementation:** BNSF through Construction Contractor, and BNSF **Monitoring and Reporting:** LAHD, Environmental Management, Construction Management and Real Estate Divisions
PC AES-2: Terminal Lighting Design Guidelines All proposed lighting installed with the proposed Project and at the alternate sites shall be in compliance with the applicable requirements of POLA's Terminal Lighting Design Guidelines. As part of this compliance, POLA shall ensure that light levels are measured at strategic points prior to the installation of new lighting systems and at the same points after the new lighting system is installed and operational to evaluate offsite light spill. If light and glare exceed POLA's guidelines, the Tenant shall implement those corrective measures deemed necessary by the POLA.	**Timing:** Prior to and during Project construction and throughout Project operation. **Methods:** This measure shall be incorporated into BNSF's design and bid and contract specifications approved by LAHD. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by BNSF's project/construction manager or designated building inspectors to ensure compliance with contract specifications.	**Implementation:** BNSF through Construction Contractor **Monitoring and Reporting:** LAHD, Environmental Management and Engineering Divisions

Air Quality		

PC AQ-11. Zero Emission Technologies Demonstration Program.
This project condition would require BNSF to work with the Port of Los Angeles to advance zero emission technologies, consistent with the Port's 2012-2017 Strategic Plan objective for the advancement of technology and sustainability, and that BNSF shall, as follows:
• Provide match funding to the Clean Air Action Plan Technology Advancement Program (TAP) zero emissions programs in an amount equal to that provided by the Port of Los Angeles up to a maximum of $3 million for purposes of zero emission drayage truck, cargo handling equipment, and proof-of-concept rail technologies demonstration.
• Implement an expeditious phase-in of zero emission drayage trucks and other zero emission technologies into the specification for vehicles serving SCIG operations following a determination of technical and commercial feasibility made by the Ports of Los Angeles and Long Beach Boards of Harbor Commissions consistent with criteria developed by the TAP Advisory Committee (TAP AC) in consultation with the project applicant and approved by the Ports of Los Angeles and Long Beach Boards of Harbor Commissions. In making any finding of technical and commercial feasibility, the Ports shall determine that such equipment or technology:
  • is commercially practicable;
  • has been successfully tested in similar conditions;
  • has been operationally proven in similar revenue service; and
  • is available in sufficient quantities to meet any such requirement
	Timing: During Project operation
	
	Methods: This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the Executive Director.
		Implementation: BNSF
		
		Monitoring and Reporting:
		LAHD, Environmental Management and Real Estate Divisions

- The phase-in shall:
    - Occur at a rate recommended by the TAP AC consistent with the feasibility criteria;
    - Be approved by the Ports of Los Angeles and Long Beach Board of Harbor Commissions consistent with the feasibility criteria; and
    - Lead to the requirement that only zero emission drayage trucks would operate at the SCIG facility.

  Long-term goal: All drayage trucks operating at the SCIG facility shall be 100% zero emissions by the end of 2020.
- Participate in a zero emissions technologies industry stakeholder group that would assist in the development of technical and commercial criteria for determination of feasibility of zero emission equipment, and advise and support demonstrations of zero emission drayage truck, cargo handling equipment, and proof of concept rail technologies in port-related operations as coordinated and directed by staff of the two ports through the TAP.
- Such demonstrations shall be performed using an appropriate railyard identified by the TAP until such time that SCIG is built, and thereafter BNSF shall allow zero emission technologies tested under the TAP zero emissions program to operate using the SCIG facility once it is constructed. BNSF shall allow TAP representatives access into portions of the SCIG facility where the zero emission equipment is being tested for the purpose of test evaluation, all subject to reasonable notice, compliance with the BNSF safety and operational rules, and without interference with facility operation.
- Criteria for evaluation of the results of all demonstrations shall be developed by the TAP AC in consultation with the project applicant regarding any equipment to be serving the SCIG facility and submitted

for approval to the Ports of Los Angeles and Long Beach Board of Harbor Commissions. Such criteria shall include, but not be limited to: technical practicability, commercial reasonableness, operationally proven, and commercial availability. Evaluation of the results of demonstration testing shall be performed by the TAP in conjunction with the applicant. Recommendations regarding the technical and commercial feasibility of these vehicles shall be presented by the TAP to the Ports of Los Angeles and Long Beach Board of Harbor Commissions for approval. **Near-term goal:** The TAP will develop an action plan by 2014 that outlines key strategies for the advancement of zero emission drayage trucks, including all criteria for evaluation of technical, commercial and operational feasibility, and identification of an appropriate railyard to support zero emission drayage truck demonstration projects starting in 2015. **Near-term and long-term goal:** Starting in 2015, the TAP shall conduct periodic evaluations of zero emission truck demonstrations on a reoccurring basis at least every two years until such time that the Ports of Los Angeles and Long Beach Board of Harbor Commissioners determine that the vehicles are technically and commercially feasible. The results of the regular evaluations shall be documented, including the analysis and conclusions as verified by the TAP, and shall be presented to the Ports of Los Angeles and Long Beach Board of Harbor Commissioners.		
PC AQ-12. San Pedro Bay Ports CAAP Measure RL-3 CAAP measure RL-3 establishes the goal that the Class 1 locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors, use ULSD or alternative fuels, and meet a minimum performance requirement of an emissions equivalent of at least 50 percent Tier 4 line-haul locomotives and 40% Tier 3 line-haul locomotives when operating on port properties by 2023. In	**Timing:** During Project operation **Methods:** This measure shall be incorporated into the lease agreements. Bi-annual tenant compliance reports shall be supplied to the Environmental Management Division. Enforcement shall include oversight by the Real Estate Division. Annual staff reports shall be made to the Executive Director.	**Implementation:** BNSF **Monitoring and Reporting:** LAHD, Environmental Management and Real Estate Divisions

March of 2008, USEPA finalized a regulation which established a 2015 date for introduction of Tier 4 locomotives. There is no regulatory mechanism in place that would mandate the early production or sale of Tier 4 locomotives prior to 2015. Additionally there is no requirement to turn fleets over to Tier 4, when it becomes available. Implementation of the RL-3 goal for the locomotives calling at SCIG while on port properties would be based on the commercial availability of operationally proven Tier 4 locomotives in 2015 and any adjustment in that date will require equivalent adjustment in the goal achievement date. The RL-3 emissions goal for locomotives calling on SCIG while on port properties may also be achieved by BNSF's reduction in air emissions anywhere in the South Coast Air Basin equivalent to the RL-3 goal for locomotives calling at SCIG while on port properties through any other alternative means. RL-3 further establishes the goal that, by the end of 2015, all Class 1 switcher locomotives operating on port property will meet USEPA Tier 4 non-road standards. In September 2009, CARB adopted its "Staff Recommendations to Provide Further Locomotive and Rail yard Emission Reductions" (CARB, 2009d) which identified several high priority strategies for reducing emissions from locomotive operations in California, including providing support for the ports "to accelerate the turnover of cleaner Tier 4 line-haul locomotives serving port properties as expeditiously as possible following their introduction in 2015, with the goal of 95 percent Tier 4 line-haul locomotives serving the ports by 2020." Thus, with the assistance of the ports' regulatory agency partners and in concert with CARB's stated goals, measure RL3 will support the achievement of accelerating the natural turnover of the line-haul locomotive fleet. This project condition was not quantified for mass emissions, air pollutant concentration or health risk benefit.		