

SECOND AMENDMENT TO AGREEMENT NO. 2467
BETWEEN THE CITY OF LOS ANGELES AND
ENVIRON INTERNATIONAL CORPORATION

Agreement No. 2467 between the CITY OF LOS ANGELES ("City") and Environ International Corporation ("Consultant") is hereby amended a second time as follows:

RECITALS

WHEREAS, City entered into Agreement No. 2467 with Consultant in or around April of 2006 and the First Amendment to Agreement No. 2467 in or around November of 2007;

WHEREAS, it is desired to increase the not-to-exceed amount of Agreement No. 2467 from One Million Eight Hundred Thousand Dollars (\$1,800,000) to Three Million Three Hundred Thousand Dollars (\$3,300,000) and to expand the existing scope of work to include services related to the Southern California Intermodal Gateway ("SCIG ") Project; and

WHEREAS, BNSF will reimburse the City for fifty percent (50%) of Consultant's costs related to the SCIG Project;

NOW, THEREFORE, in consideration of the foregoing recitals and of the terms and conditions of this Second Amendment, the parties agree follows:

1. The total compensation set forth in Section V. A. 1 is increased from One Million Eight Hundred Thousand Dollars (\$1,800,000) to Three Million Three Hundred Thousand Dollars (\$3,300,000).

2. Exhibit A: Scope of Work is hereby amended to add the additional services listed in Exhibit A-1: Additional Scope of Work (attached to this Second Amendment).

3. The following Section XXXI: TERMINATION DUE TO NON-APPROPRIATION OF FUNDS is hereby added:

XXXI. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60 day period. The Consultant is responsible for maintaining all insurance and bonds during this 60 day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

Except as amended herein, all remaining terms and conditions of Agreement No. 2467 and the First Amendment to Agreement No. 2467 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Agreement No. 2467 on the date to the left of their signatures.

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

Dated: _____

By _____
Executive Director

Attest _____
Board Secretary

ENVIRON INTERNATIONAL CORPORATION

Dated: _____

By _____

(Type/Print Name and Title)

Dated: _____

Attest _____

(Type/Print Name and Title)

APPROVED AS TO FORM

_____, 2008
ROCKARD J. DELGADILLO, City Attorney

By _____
(Deputy/Assistant)

Account #	54260	W.O. #	24760
Ctr/Div #	1189	Job Fac. #	635-00
Proj/Prog #	651		

Budget	
FY:	Amount:
07/08	171,400
08/09	1,028,600
TOTAL	

For Acct/Budget Div. Use Only:

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

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Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest _____
Board Secretary

ENVIRON INTERNATIONAL CORPORATION

Dated: _____

By _____

(Type/Print Name and Title)

Dated: _____

Attest _____

(Type/Print Name and Title)

APPROVED AS TO FORM

_____, 2008
ROCKARD J. DELGADILLO, City Attorney

By _____
(Deputy/Assistant)

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FY:	Amount:
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08/09	1,028,600
TOTAL	

For Acct/Budget Div. Use Only:

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

Exhibit A-1

Additional Scope of Work

Consultant shall perform the following activities in connection with development of the SCIG EIR:

1. Finalize Project Description and Description of Alternatives (including identification of final assumptions and parameters associated with real estate issues);
2. Complete unresolved portions of existing environmental conditions associated with unresolved project elements (especially including assumptions for final real estate issues);
3. Perform final environmental impacts analysis;
4. Complete technical reports and appendices;
5. Prepare Administrative Draft EIR for internal review;
6. Respond to internal comments, and prepare revised Draft EIR (final screen check) for internal final sign-off before release to public;
7. Prepare Draft EIR and release to public;
8. Facilitate and attend public meetings;
9. Respond to public comments;
10. Prepare Administrative Final EIR;
11. Respond to internal comments, and prepare revised Final EIR (final screen check) for internal final sign-off before release to public;
12. Prepare Final EIR for release to public;
13. Prepare findings;
14. Prepare sensitivity analyses for alternatives, as necessary, throughout development of the environmental documents.

AGREEMENT NO.

**COST-SHARING AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
BNSF RAILWAY COMPANY**

This Cost-Sharing Agreement (the “**Agreement**”) is made and entered into this _____ day of _____, 2008, by and between the City of Los Angeles, a municipal corporation (“**City**”), acting by and through its Board of Harbor Commissioners (“**Board**”) and BNSF Railway Company, a Delaware corporation (“**BNSF**”).

RECITALS

WHEREAS, BNSF proposes to construct an inter-modal container transportation facility, which will be commonly known as the Southern California International Gateway (“**SCIG**” or “**proposed Project**”), in the City of Los Angeles on property controlled by the Los Angeles Harbor Department (“**POLA**”); and

WHEREAS, BNSF and City desire to share in the costs to fund the environmental assessment for the proposed Project;

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and BNSF hereby agree as follows:

AGREEMENT

1. NO APPROVAL; NO WAIVER OF POLA’S DISCRETIONARY AUTHORITY. BNSF and City expressly acknowledge and agree that this Agreement does not grant BNSF nor City any right or obligation to enter into any other binding agreement relative to the design, engineering, construction, development, operation, and lease of the SCIG, nor obligate City, Board, POLA and/or the Los Angeles City Council (“**City Council**”) to approve or certify the proposed Project or the resulting environmental assessment. Any further agreement, approval or certification shall be subject to the review and approval of the Board; and should it elect to do so, the City Council. Both parties further acknowledge and agree that the Board and City Council retain all discretion granted to them under law in considering the proposed Project and that nothing in this Agreement is intended to limit their discretionary powers or waive any third party procedural due process rights.

2. TERM AND TERMINATION.

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. BNSF is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council’s approval of the Agreement.

B. Unless terminated earlier as provided herein, this Agreement shall terminate upon the Termination Date. For purposes of this Agreement, the "Termination Date" shall refer to the date upon which the Board and/or City Council takes its last discretionary action on the proposed Project. In no event shall the Termination Date be more than three years from the Effective Date. Prior to the Termination Date, either party may withdraw in writing from the preparation of the draft Environmental Assessment as contemplated by this Agreement upon ten (10) working days written notice to the other party, which withdrawal shall be without liability or penalty. Should either party so withdraw, this Agreement will terminate except that BNSF's reimbursement obligations will survive the termination as set forth below. Should the decision be made by either party to terminate this Agreement, POLA shall immediately cease work and direct its consultants to cease work on the Environmental Impact Report ("EIR") and all other environmental assessments relating to the SCIG (collectively the "Environmental Assessment"). In no event shall either party be reimbursed by the other for any further costs incurred after ten (10) working days past the date of such termination. Notwithstanding anything in this Agreement to the contrary, should BNSF be the party electing to terminate this Agreement, BNSF shall reimburse POLA for one hundred percent (100%) of all costs incurred in the preparation of the SCIG Environmental Assessment up to and during the ten (10) working day notice period, but for no further costs whatsoever.

3. ENVIRONMENTAL ASSESSMENT COST SHARE. BNSF agrees to reimburse City for one half (1/2) of all costs of preparation of the Environmental Assessment of the proposed Project as follows:

A. Reimbursement for Previous Costs Incurred by POLA. POLA, as the lead agency for purposes of the California Environmental Quality Act ("CEQA", Public Resources Section 21000 et seq.) entered into a consulting agreement with Environ International Corporation ("ENVIRON") dated June 22, 2005 (the "Original ENVIRON Contract Date") for work in connection with the preparation of the Environmental Assessment of the SCIG (the "**ENVIRON Contract**"). Within fourteen (14) calendar days after the Effective Date, POLA shall provide to BNSF copies of all invoices submitted by ENVIRON, in essentially the form of the sample invoice provided in Exhibit A to this Agreement and incorporated by reference herein, since the Original ENVIRON Contract Date (the "Previous ENVIRON Invoices"). Upon receipt by BNSF of the Previous ENVIRON Invoices, BNSF shall pay to POLA one half (1/2) of the total amount of the Previous ENVIRON Invoices (estimated at \$895,670) as reimbursement for BNSF's share of the costs associated with the work performed on the Environmental Assessment prior to the Effective Date.

B. Reimbursement for Costs Incurred by POLA after Effective Date.

(I). Upon receipt by POLA of the reimbursement referred to in paragraph 3.A above, and receipt of any outstanding project information from BNSF, and submittal of real estate information acceptable to POLA's Real Estate Division, POLA shall provide BNSF with an estimated total budget for completion of all remaining work to complete the Environmental Assessment ("**Total Budget**") broken out by the tasks set forth in the sample invoice provided in Exhibit "A" to this Agreement and will provide a project schedule for completion of the Environmental Assessment.

(II). Upon delivery of the "Total Budget" the parties will jointly determine a monthly estimated expense threshold. If the threshold will be exceeded within a single billable month, all parties must be notified.

(III) POLA shall submit a monthly invoice to BNSF (the "**Monthly Invoice**"), commencing with and including the first calendar month after the Effective Date, listing the monthly charges generated for the ongoing preparation of the Environmental Assessment. The Monthly Invoice shall be in the general form provided in Exhibit A, and include a progress report describing the activities performed under the ENVIRON Contract during the subject month, along with the charges associated with such activities. The Monthly Invoice shall be submitted to BNSF with a cover letter from POLA, in the general form provided in Exhibit A, which shall present BNSF's share of such costs (50%). The invoice shall be due for payment by BNSF to POLA immediately upon its receipt by BNSF.

4. STANDARD OF CARE. POLA hereby represents and warrants that the work performed to complete the Environmental Assessment shall be undertaken with the same standard of care and diligence as has been applied to its most recent environmental assessment work. As POLA is the lead agency and its independent judgment must apply, as provided for in section 5 below, POLA will determine whether the standard of care is the same as has been applied to its most recent environmental assessment work

5. LEAD AGENCY'S INDEPENDENT JUDGMENT. The Final EIR must reflect the lead agency's independent judgment (CEQA Section 21082.1(c) and 14 C.C.R. Section 15084). Accordingly, the final responsibility and final authority on all questions concerning the content and quality of the Final EIR lies in the sole discretion of POLA. Applicant, BNSF understands and agrees that ENVIRON only owes a duty to POLA and ENVIRON will be accountable to POLA alone and not to the applicant or to any other third-person or entity. While POLA will keep BNSF informed of the progress of the Environmental Assessment, BNSF will not receive drafts or versions of the EIR or any sections thereof prior to release to the public, and BNSF's reimbursement and cost-sharing obligations are not in any way conditioned on its approval of or satisfaction with the draft and/or final EIR or any sections thereof.

6. NO CONFIDENTIALITY. The parties may reveal all or part of this Agreement to others as required by law.

7. ASSIGNMENTS. BNSF may not assign its rights under this Agreement to any third party but may assign the entire agreement to any subsidiary or affiliate of BNSF. Any assignment by BNSF shall not relieve BNSF from its duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and BNSF shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. POLA may not assign its rights under this Agreement.

8.. MISCELLANEOUS.

a. *Applicable Law.* This Agreement will be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles.

b. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

c. *Legal Capacity.* Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

d. *Notice.* The following addresses shall serve as the locations to which notices and other correspondences between BNSF and POLA shall be sent:

To BNSF: BNSF Railway Company

 2500 Lou Menk Drive

 Fort Worth, Texas 76131-2828

 Attn: Vice-President and General Counsel

POLA: The City of Los Angeles Harbor Department

 425 S. Palos Verdes Street

 San Pedro, CA 90733-0151

 Attn: Executive Director

With a copy to: Office of the City Attorney

 425 S. Palos Verdes Street

 San Pedro, CA 90733-0151

 Attn: Janna Sidley, Deputy City Attorney

IN WITNESS WHEREOF, the parties hereto have executed this Cost Sharing Agreement as of the dates below.

THE CITY OF LOS ANGELES, by its

Board of Harbor Commissioners

Date: _____

By _____
Executive Director

Attest: _____
Secretary

**BNSF RAILWAY COMPANY, a
Delaware corporation**

Date: _____

By: _____

Print name/Title: _____

Attest: _____

Print name/Title: _____

APPROVED AS TO FORM

_____, 2008
ROCKARD J. DELGADILLO, City Attorney

By _____
Simon Kann, Deputy

Subconsultant Participation Levels

ENVIRON INTERNATIONAL CORPORATION - SCIG EIR

Office Location: 101 Rowland Way #220, Novato, CA 94945

Subconsultants	City, ST	Classification	Billed*	% of Total Billed
QUESCO	Los Angeles, CA	MBE	\$255,312	15.1%
Acoustics Group, Inc.	Irvine, CA	MBE	\$28,295	1.7%
MBI Media	Covina, CA	WBE	\$48,378	2.9%
Entech Consulting	Temecula, CA	WBE	\$2,187	0.1%
Meyer Mohaddes (Iteris)	Long Beach, CA	OBE	\$47,134	2.8%
Alliance Acoustical	Irvine, CA	OBE	\$18,575	1.1%
EDAW	Los Angeles, CA	OBE	\$132,314	7.8%
TOTAL:			\$532,196	31.6%
MBE:			\$283,607	16.9%
WBE:			\$50,566	3.0%
OBE:			\$198,023	11.8%

*Participation as of February 29, 2008.