

March 4, 2022

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

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ENTERED  
Office of Proceedings  
March 4, 2022  
Part of  
Public Record

***Submitted via e-filing***

Re: STB Finance Docket No. 36312, *Oakland Global Rail Enterprise, LLC – Authority to Operate a Rail Line in Oakland, CA*

Dear Ms. Brown:

I am attaching for e-filing in the above captioned proceeding the City of Oakland's Comment, Request to Hold the Proceeding in Abeyance, and Motion for Leave to File Time for Filing Having Otherwise Expired, in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Yours very truly,



Charles A. Spitulnik

Enclosure

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 36312**

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**OAKLAND GLOBAL RAIL ENTERPRISE, LLC—  
AUTHORITY TO OPERATE A RAIL LINE IN OAKLAND, CA**

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**COMMENT OF CITY OF OAKLAND,  
REQUEST TO HOLD THE PROCEEDING IN ABEYANCE,  
AND MOTION FOR LEAVE TO FILE  
TIME FOR FILING HAVING OTHERWISE EXPIRED**

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*Counsel for the City of Oakland, California*

Dated: March 4, 2022

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 36312**

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**OAKLAND GLOBAL RAIL ENTERPRISE, LLC—  
AUTHORITY TO OPERATE A RAIL LINE IN OAKLAND, CA**

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**COMMENT OF CITY OF OAKLAND,  
REQUEST TO HOLD THE PROCEEDING IN ABEYANCE,  
AND MOTION FOR LEAVE TO FILE  
TIME FOR FILING HAVING OTHERWISE EXPIRED**

**INTRODUCTION**

The City of Oakland, California (“City”) hereby submits this Comment to the Board in response to the Verified Petition for Exemption (“Petition”) filed by the Oakland Global Rail Enterprise, LLC (“OGRE”) in Finance Docket No. FD 36301 on February 4, 2022. The City believes it is compelled to clarify that OGRE did not provide the City with prior notice or opportunity to discuss OGRE’s Petition, and the scope of OGRE’s request is surprising to the City because: (1) the Petition covers territory not previously subject to the Board’s regulatory authority and not considered in previous proceedings before the Board involving OGRE and the City, and (2) OGRE does not currently hold the requisite property or contractual rights necessary to operate over some portions of the track for which it is seeking authorization. The City is currently in settlement negotiations with OGRE’s sub-landlord and parent affiliate, the Oakland Bulk and Oversized Terminal (“OBOT”) and OGRE regarding roles, obligations, and rights that encompasses rail operations on property subject to the Petition. The rights that OGRE seeks in the Petition, in part, purport to extend the territory beyond the property over which OGRE and

OBOT secured the right to operate previously. At this time, the City does not agree, has not agreed, and will not agree that there should be an extension of OGRE's existing right to operate on the City's land. These issues are subject to current negotiations. To protect those negotiations, the City requests that the Board take these facts under consideration and hold these proceedings in abeyance pending completion of settlement negotiations. However, if the Board grants the Petition, the Board must underscore to OGRE any authority granted herein is permissive and does not grant the requisite property rights for OGRE to operate on the City's property. The City also requests that the Board grant the City leave to file this Comment after the 20-day period normally available to file responsive pleadings has passed. Because OGRE does not have all of the property rights necessary for it to implement any permissive order that this Board may issue, OGRE is not prejudiced by the City's late filing of this Comment.

### **BACKGROUND**

OGRE's Petition presents the request to conduct common carrier operations on property ("OAB Property") owned by the City located at the former Oakland Army Base, which is located adjacent to the Port of Oakland. The City acquired the OAB property, including its rail tracks and facilities, through a series of transactions between 2003 and 2012 for the purpose of redeveloping the area as part of the Oakland Army Base Redevelopment Project. At the time of acquisition, the City was not aware that the OAB Property contained trackage subject to the jurisdiction of this Board, and the City has never had any intention of holding itself out as a common carrier by rail or providing rail service itself. The City did, and does, intend to redevelop the OAB Property to enable tenants to be served by rail. Part of the redevelopment plan is to include a bulk terminal facility on the north-westernmost portion of the OAB Property on property referred to as the West Gateway ("West Gateway Property"). The West Gateway

Property is identified by label in Exhibit B of OGRE's Petition. The bulk terminal facility on the West Gateway Property is intended to be served by rail.

In 2016, the City entered into an agreement with OBOT to develop the OAB Property. OBOT subsequently subleased certain property and rail facilities within the OAB Property to OGRE ("OGRE Sublease"). A copy of the OGRE Sublease with the description of the property subject to the sublease ("OGRE Sublease Property") is attached as **Exhibit A**. The OGRE Sublease describes and depicts the OGRE Sublease Property as including a straight right-of-way parallel to West Burma Road that serves the West Gateway Property, the latter of which is identified in the relevant map attached to the OGRE Sublease as the portion of "Lot 9" and "Lot 10" not part of the OGRE Sublease Property. See OGRE Sublease, Ex. A, labelled page CCIG020401. The OGRE Sublease Property provides access to the West Gateway Property along the north side of Lot 10, and does not extend southwards towards the pier on the south side of Lot 10 (identified as part of "Lot 9").

Disagreements between the City and OBOT and OGRE have delayed redevelopment and rail service at the OAB Property, but the City and OBOT and OGRE are in the midst of settlement negotiations to resolve these disagreements, and the City is hopeful regarding this process. The settlement is intended to clarify the roles, rights, and responsibilities of the City, OBOT, and OBOT's subtenants, including OGRE and to resolve the entire universe of disputes regarding redevelopment of the OAB Property.

In 2019, the Board determined that certain track contained in the OAB running parallel to a portion of West Burma Road and I-80 and identified as the "Middle Segment" by the Board, was jurisdictional track that had not been abandoned. See *Oakland Global Rail Enterprise—Petition for Declaratory Order*, FD 36168, slip op. at 5-6 (STB served Mar. 15, 2019) ("March

2019 Decision”). A copy of the map filed by OBOT and OGRE in those proceedings<sup>1</sup> which served as the basis for the Board’s identification of the Middle Segment, is attached at **Exhibit B**. The Board also concluded that it could not determine from the record whether an adjacent segment directly west of the Middle Segment, identified by the Board as the “West Segment”, a stub-ended track leading the West Gateway Property, was jurisdictional track, but concluded that even if it were, it would constitute excepted track not subject to the Board’s regulation. *See id.* at 5, 7-8. The West Segment is also identified in **Exhibit B**. *See also id.* at 5 (describing the West Segment). A comparison of the map attached to the OGRE Sublease depicting the OGRE Sublease Property (**Exhibit A**, page CCIG020401), and the map in **Exhibit B** show that the Middle Segment and West Segment constitute part of the OGRE Sublease Property that provides rail access to the West Gateway Property.

In 2019, pursuant to an order by the Board, OGRE, OBOT, and the City filed verified notices of exemption to acquire the ROW Property, Docket Nos. FD 36301, 36302, and 36303, respectively. The property covered by these notices of exemption was the Middle Segment, not the West Segment. *See Oakland Global R. Enterprise—Petition for Declaratory Order*, FD. 36168 *et al.*, slip op. at 9 (STB served June 20, 2019) (“June 2019 Decision”); *See also* Oakland Global Rail Enterprise Verified Notice of Exemption Under 49 C.F.R. 1152.31, FD 36301, Exhibit A (Filed May 4, 2019) (showing map of railroad line subject to the notice of exemption). The Board has been clear in previous proceedings that OGRE does not yet have operating authority for any portion of the OAB Property. *See* June 2019 Decision at 8. Accordingly, OGRE has obtained neither acquisition authority nor operating authority for any property south of the OGRE Sublease Property, including most of the West Gateway Property

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<sup>1</sup> Petitioner’s Response to the Surface Transportation Board’s Request for Additional Information, FD 36168 (Filed Aug. 21, 2018), Ex. A.

beyond its north edge. The lack of Board regulated line south of the OGRE Sublease Property does not prevent tenants from being served via the OGRE Sublease Property, just as they were when only the Middle Segment, but not necessarily the West Segment, was regulated jurisdictional rail line.

On February 4, 2022, OGRE filed the Petition, which seeks operating authority for 18.2 miles or 95,950 feet of rail line. Petition at 7. This is more than the 22,202 feet of existing track on the OAB property previously identified by OGRE and subject to the Board's consideration in previous proceedings. See June 2019 Decision at 2. From the description in its Petition and associated maps, it is clear that OGRE is seeking authority to operate rail line beyond the scope considered by the Board previously, notably an area that OGRE describes as "[a]pproximately 4,525 feet of existing 'on docks' track in the West Gateway area." Petition at 8. See also *id.*, Ex. B (labelled "Existing On Dock Track" and noted in blue within "Lot 9". The 'on docks' track will hereinafter be referred to as the "On Docks Track"). The On Docks Track is not part of the Middle Segment previously determined to be a rail line subject to the Board's regulation, nor is it part of the West Segment, which the Board determined to be, at most, excepted track. It therefore constitutes a new extension of rail line that would become subject to the Board's regulation for the first time as a result of the Petition.

OGRE's Petition indicates that OGRE obtained a sublease from OBOT for a segment of the OAB Property identified as the "Rail Right of Way". Petition at 6. The description in the Petition and its depiction in the map attached as Exhibit B to the Petition indicate that the Rail Right of Way encompasses the West Segment and Middle Segment, as well as additional right-of-way due west of the West Segment and continuing to run parallel with I-80. The Rail Right of Way also corresponds with the OGRE Sublease Property described in the OGRE Sublease

**(Exhibit A).** The On Docks Track is not included in the Rail Right of Way property. Petition at 8 and Ex. B.

### **COMMENT, REQUEST, AND MOTION**

OGRE has approached the Board without notifying or consulting with the City ahead of time regarding the Board's regulation of the City's property. OGRE's Petition is particularly troubling because the City is in the middle of sensitive negotiations with OGRE's affiliate and landlord, OBOT, and OGRE to settle longstanding disputes regarding development of the OAB Property. These negotiations include clarifying the roles, responsibilities, and rights of OBOT as the City's tenant and its subtenants, including OGRE. As indicated in the OGRE Sublease attached at **Exhibit A**, OGRE does not currently have the rights necessary to operate over some of the property for which it has sought the Board's exemption authority, including particularly the On Docks Track. The existing Rail Right of Way, which is co-extensive with the OGRE Sublease Property and includes the West Segment and the Middle Segment, is intended to serve the West Gateway Property and the bulk facility located on that property. OGRE now appears to seek in this proceeding to extend its operating authority from this Board to track over which it has no current legal right to be present, and, at this time, unless and until negotiations are concluded, the City does not support OGRE expanding its regulatory operating authority beyond the existing footprint identified in previous proceedings before the Board.

The City understands that the Board's exemption authority is permissive, and that the grant of an exemption does not constitute a ruling on state contract or property disputes that may affect a party's ability to exercise the regulatory granted by the Board. *See Oakland Global Rail Enterprise, LLC—Acquisition Exemption—Rail Line in Alameda County, Cal.*, FD 36301, slip op. at 5 (STB served October 28, 2019). The City also acknowledges that the absence of the

requisite property rights does not necessarily present a sufficient basis for denying exemption. *See id.* (discussing the notice of exemption process).

However, it is also true that the possession of requisite property rights is a necessary element for providing transportation as a common carrier and, at least with respect to the Board's class exemption process, the failure to disclose disputes regarding property rights may be a factor that may be considered in granting or rejecting a notice of exemption. *See* 49 C.F.R.

§ 1150.33(c); *Rail Switching Services, Inc.—Operation Exemption—Pemiscot County Port Authority*, FD 35685 et al. (STB served Jan. 8, 2013). Furthermore, the Board does not countenance abuse of its processes or misleading statements regarding ownership. *U.S. Rail Corp.—Lease & Operation Exemption—Shannon G., A N.J. LLC*, FD 35042, slip op. at 3-4 (STB served Oct. 8, 2008). OGRE's filing has not made it clear to the Board that it does not have the contractual or property rights to operate over segments of new territory over which it proposes to operate. Nor has OGRE mentioned that its rights and activities on the OAB Property are the subject of settlement negotiations, or given any basis for this Board to understand that OGRE might someday actually receive the rights to engage in rail operations on property that is encompassed within its Petition. The City requests the time and space to resolve any issues regarding such use rights in the existing negotiations.<sup>2</sup>

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<sup>2</sup> In addition to the concern identified by the City with respect to OGRE's request to operate the On Docks Track on the pier that is part of Lot 9 (outside the existing OGRE sublease), the City also notes that OGRE's filing represents to the Board that it has current rights to current other "existing" track within Port-controlled property (labelled in Exhibit B to the Petition as "Existing track owned by OGRE and located on land owned by the City and controlled by the Port"). To clarify for the record, these rail improvements on the track on Port of Oakland-controlled land (which are subject of certain construction obligations for OBOT under the West Gateway Ground Lease, conveyed to OGRE by sublease), do not exist at this time. Moreover, OBOT and OGRE's rights and/or obligations to construct this track, the deadlines for construction, and any access rights, are the subject of current and ongoing negotiations between the City and OBOT and OGRE. The foregoing therefore provides an additional reason for this Board to hold in abeyance the resolution of OGRE's pending application to allow those negotiations to proceed to conclusion.

The Board must also understand that the preemptive effect of the Board's jurisdiction over rail lines may be invoked to influence the outcome of what are essentially property disputes. *See, e.g., Tri-State Brick & Stone of New York, Inc.—Petition for Declaratory Order*, FD 34824 (STB served Dec. 10, 2007). There have already been serious disputes between the City and OBOT and OGRE regarding property and contractual rights with respect to the OAB Property, and the City desires to avoid the risk of uncertainty regarding these rights as they are being renegotiated. Accordingly, the City respectfully requests that the Board hold these proceedings in abeyance pending the outcomes of settlement negotiations.

The City seeks the Board's leave to file this Comment after the regulatory period for replies is due. The Board typically accepts late filings when (1) good cause for filing late is shown, (2) filing late will not delay the proceedings, and (3) filing late will not prejudice any party. *Wis. Cent. Ltd.—Abandonment Exemption—in Barron Cnty., Wis.*, STB Docket No. AB-303 (Sub-No. 43X) (STB served March 27, 2014). Here, good cause exists to accept the City's filing eight days after the 20 day period for filing replies has passed. The City was given no advance notice regarding OGRE's Petition, and the City had not expected to be required to respond to a Board filing in the midst of intense negotiations with OBOT regarding issues that are at the heart of the ongoing negotiations. Because the Board has not yet issued a decision regarding OGRE's Petition, and because the City is filing merely to clarify certain factual aspects of the Petition that may assist the Board in its considerations, the City does not believe that acceptance of its Comment will delay the proceedings. Furthermore, OGRE could not act on its regulatory authority even if granted because it does not possess the necessary property or contractual rights to operate on portions of the lines for which it seeks authority. Finally, accepting additional facts that will assist the Board in considering the Petition will not reasonably prejudice OGRE. The

City believes that acceptance and consideration of its Comment will help avoid prejudice of the City's rights.

### **CONCLUSION**

Accordingly, the City requests that the Board take under consideration in its evaluation of OGRE's Petition that OGRE is seeking to expand the territory of regulated track, that OGRE does not have the requisite property rights to conduct rail operations on this new territory, and that the City, as owner of the property, is surprised by the filing, has no intent to expand regulated rail service on its property, and objects to the extension of regulated rail service on the OAB Property inconsistent with the current contractual property rights and authority to operate. Accordingly, the City requests that the Board stay these proceedings pending completion of settlement negotiations. If the Board does not agree to stay these proceedings, the City respectfully requests that the Board expressly indicate in its decision that OGRE cannot operate common carrier service over track for which it has no contractual or property right to undertake such operations.

Dated: March 4, 2022

Respectfully submitted,



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*Counsel for the City of Oakland, California*

### Certificate of Service

I hereby certify that I have this 4th day of March, 2022, caused to be served a copy of the foregoing Comment, Request, and Motion upon the following parties of record by e-mail:

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*Counsel for the Port of Oakland*

  
\_\_\_\_\_  
Charles A. Spitulnik

# **EXHIBIT A**

## **OGRE Sublease Property**

## SUBLEASE AGREEMENT (WGW Rail)

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered into by and between OAKLAND BULK AND OVERSIZED TERMINAL, LLC, a California limited liability company ("Sublandlord"), and OAKLAND GLOBAL RAIL ENTERPRISE, LLC, a California limited liability company ("Subtenant") (individually, "Party", together, the "Parties"), as of June 26, 2018.

### RECITALS

This Sublease is made with reference to the following facts:

A. The City of Oakland ("City" or "Master Landlord") is the owner of that certain real property located in a portion of the former Oakland Army Base, comprised of approximately 33.84 acres of land, improvements, and appurtenances, and commonly referred to by the Parties as the West Gateway. The West Gateway is more particularly described and depicted in the Master Lease (defined below). Pursuant to that certain Oakland Army Base Title Settlement and Exchange Agreement, dated as of or about June 30, 2006, all of the West Gateway was freed from the public trust for commerce, navigation and fisheries ("Public Trust"), the terms and conditions of Chapter 657 of the Statutes of 1911, as amended ("1911 Grant"), and other statutory restrictions, with the exception of one approximately 16.7-acre parcel ("Parcel E"), which was impressed with the public trust and the terms and conditions of the 1911 Grant by patent from the State of California.

B. City, Prologis CCIG Oakland Global, LLC ("Prologis/CCIG") and Sublandlord (as successor-in-interest to Prologis/CCIG with respect to the West Gateway via a partial assignment) have executed that certain Lease Disposition and Development for the Army Base Gateway Redevelopment Project, dated October 16, 2012, as amended (the "LDDA"), which provides, among other things, for the execution and delivery by the Parties, upon satisfaction of conditions precedent set forth therein, of a ground lease by City to Sublandlord (or an Affiliate of Sublandlord) of the West Gateway, and the development thereon of certain improvements consistent with the Scope of Development attached hereto as Exhibit 3.2 and the provisions of this Sublease (the "Project").

C. City and Sublandlord entered into that Army Base Gateway Redevelopment Project Ground Lease for West Gateway dated February 16, 2016, whereby City leased to Sublandlord and Sublandlord leased from City that certain property comprised of the West Gateway Property and Railroad R/O/W Property, as each are further described in that agreement (the "Master Lease") and collectively referred to therein as the Property. The conveyance by the Master Lease to Sublandlord was authorized by Council Ordinance No. 13131 C.M.S., dated July 3, 2012. The Master Lease, as it pertains to Parcel E, is also consistent with the Public Trust and the terms and conditions of the 1911 Grant. In addition, the rents due to the City under Article 2 of the Master Lease are allocable between Parcel E and the remainder of the West Gateway for purposes of the City's compliance with its obligations under Section 6306 of the Public Resources Code.

D. Sublandlord now desires to sublease to Subtenant a portion of the Railroad R/O/W Property leased to Sublandlord under the Master Lease containing approximately 11.5 acres, and Subtenant desires to sublease such portion from Sublandlord, in accordance with the terms and conditions of this Sublease.

E. All conditions precedent to the execution and delivery of the Master Lease as set forth in the LDDA have been satisfied or waived by Sublandlord and City in accordance with the LDDA and/or the Master Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Sublease, and in reliance on Subtenant's and Sublandlord's representations and warranties set forth herein, Sublandlord and Subtenant hereby agree as follows:

#### **ARTICLE 1 -- BASIC SUBLEASE INFORMATION**

1.1 Definitions. In addition to the terms which are defined elsewhere in this Sublease, the following defined terms are used in this Sublease (any defined term used herein, but not defined herein, shall have the meaning given that term in the Master Lease):

(a) Sublandlord: Oakland Bulk and Oversized Terminal, LLC, a California limited liability company

(b) Sublandlord's Address:

Oakland Bulk and Oversized Terminal, LLC  
c/o California Capital & Investments, Inc.  
The Rotunda Building  
300 Frank Ogawa Plaza, Suite 340  
Oakland, CA 94612  
Attn: Mr. Phil Tagami  
Facsimile: (510) 834-5380

(c) Subtenant: Oakland Global Rail Enterprise, LLC, a California limited liability company

(d) Subtenant's Address:

Oakland Global Rail Enterprise, LLC  
c/o California Capital & Investments, Inc.  
The Rotunda Building  
300 Frank Ogawa Plaza, Suite 340  
Oakland, CA 94612  
Attn: Mark McClure  
Facsimile: (510) 834-5380

- (e) Subleased Premises: A portion of the real property leased to Sublandlord pursuant to the Master Lease (defined below) containing approximately 11.5 acres of land and rail improvements, as more particularly described and depicted in Exhibit A attached hereto.
- (f) Term: Twenty-Five (25) years.
- (g) Commencement Date: The date on which all of the Commencement Conditions (defined in Section 2.2(a), below) have been satisfied.
- (h) Rent: That portion of Rent due under the Master Lease with respect to the Subleased Premises.
- (i) Rent Commencement Date: The date that Subtenant commences operation of the Subleased Premises for the Permitted Uses (defined in Section 5.1, below), following the completion of the Initial Improvements (defined in Section 3.1, below).
- (j) Additional Rent: Any and all amounts, other than Rent, that Subtenant is required to pay pursuant to this Sublease.
- (k) Security Deposit: \$1,000.00
- (l) Brokers: N/A
- (m) Termination Option. As set forth in Article 2, below.

1.2 Exhibits. The following exhibits are made part of this Sublease:

EXHIBIT A – Subleased Premises

EXHIBIT 8.2(c) – Third Party Agreements

Exhibits Found in Master Lease (incorporated herein by reference):

EXHIBIT 15.1.4 - A – Restrictive Covenant

EXHIBIT 15.1.4 - B – EDC Deed

EXHIBIT 14.1 – Insurance

EXHIBIT 37.5 – Acknowledgement of Campaign Contribution Limits

EXHIBIT 37.6 – Community Benefits

EXHIBIT A Construction Jobs Policy for Vertical Construction

EXHIBIT B Construction Jobs Policy for the Public Improvements

EXHIBIT C Operations Jobs Policy

EXHIBIT D CEQA Standard Conditions of Approval and Mitigation Monitoring and Reporting Program

## ARTICLE 2 -- AGREEMENT

2.1 Agreement. Sublandlord subleases the Subleased Premises to Subtenant, and Subtenant subleases the Subleased Premises from Sublandlord, according to the terms of this Sublease. The foregoing grant includes the non-exclusive right to use (a) the Railroad Crossings on Master Landlord's property, as more particularly described in Section 1.5.1 of the Master Lease; (b) Sublandlord's easement rights and appurtenances with respect to the Subleased Premises; and (c) the access roads to and from the Subleased Premises. Further, Sublandlord agrees to grant Subtenant additional rights of access over other portions of the West Gateway Lease Area if and to the extent (i) reasonably necessary for Subtenant to use the Subleased Premises for the purposes set forth in this Sublease, (ii) not prohibited by the terms of the Master Lease (and, if required, the consent of Master Landlord has been obtained), (iii) not prohibited by the terms of any other another agreement to which Sublandlord is bound, including, but not limited to, other subleases for the West Gateway Lease Area, and (iv) Subtenant's use thereof is conducted in accordance with Sublandlord's reasonable rules and restrictions. Notwithstanding the foregoing, Sublandlord shall not be obligated to incur any out of pocket cost in connection with the grant of any additional rights of access, nor shall Sublandlord be obligated to make any improvements to the Subleased Premises or the West Gateway Lease Area.

### 2.2 Term.

(a) Pre-Term Period; Conditions Precedent. This Sublease shall be effective from and after the date first set forth above; provided, however, (i) possession of the Subleased Premises shall not be delivered to Subtenant, (ii) the Commencement Date of this Sublease shall not occur, and (iii) Subtenant shall not be required to perform any obligations arising under this Sublease until all of the following conditions precedent have been satisfied (or waived in writing by Subtenant): (1) Sublandlord shall have received written confirmation from the Surface Transportation Board ("STB") that rehabilitation of the rail improvements located within the Subleased Premises does not require STB approval, (2) Sublandlord's completion of rail improvement rehabilitation, and (3) Subtenant having received an approval from STB for an exemption to operate on the rail lines within the Subleased Premises as a Class III common carrier (collectively, the "Commencement Conditions"). Sublandlord (with respect to Commencement Conditions (1) and (2)) and Subtenant (with respect to Commencement Condition (3)) shall each use commercially reasonable efforts to satisfy the applicable Commencement Conditions as soon as practicable. If any of the Commencement Conditions remain unsatisfied and un-waived as of the date that occurs twelve (12) months after the date of this Sublease (the "Outside Date"), then Subtenant may elect to terminate this Sublease by giving notice thereof to Sublandlord following the Outside Date. If such notice is given, this Sublease and the rights and obligations of the parties pursuant to this Sublease shall cease and terminate. If Subtenant does not exercise the foregoing right to terminate this Sublease, the parties shall each continue to use commercially reasonable efforts to satisfy such Commencement Conditions.

(b) Term. The Term of this Sublease will begin on the Commencement Date and will continue for the period set forth in Section 1.1(f), above; provided, however, that this Sublease shall automatically terminate upon a termination of the Master Lease for any reason

whatsoever, unless otherwise continued as a direct lease between Subtenant and Master Landlord, at the sole option of Master Landlord.

2.3 Early Termination. Subtenant will have the right to cancel this Sublease, effective at any time, upon ninety (90) days' prior written notice to Sublandlord ("Subtenant's Termination Notice"). Upon Subtenant's compliance with the terms of this Section 2.3, Article 11, and Subtenant's payment of all amounts owed to Sublandlord under this Sublease, to the date of termination, this Sublease will terminate as of the date of termination set forth in Subtenant's Termination Notice and neither Sublandlord nor Subtenant will have any further rights or obligations under this Sublease, except with respect to those matters in this Sublease which expressly survive the termination of this Sublease.

### **ARTICLE 3 -- DELIVERY OF SUBLEASED PREMISES**

3.1 Delivery of Possession. Sublandlord will deliver possession of the Subleased Premises to Subtenant, and Subtenant will accept the Subleased Premises broom clean, but otherwise "AS-IS" in their present condition on the Commencement Date. Further, Subtenant acknowledges that neither Sublandlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Subleased Premises for the conduct of Subtenant's business or as to the physical condition or actual dimensions of the Subleased Premises, and, except as set forth in the Master Lease, neither Sublandlord nor its agents or employees agreed to undertake any alterations or construct any tenant improvements to the Subleased Premises.

3.2 Notice of Restrictions in the Restrictive Covenant and EDC Deed. The Restrictive Covenant required by DTSC as part of the Consent Agreement provides that all of the environmental restrictions set forth in the Restrictive Covenant shall be included in any transfer of the EDC Property or any interest therein. The Restrictive Covenant is provided in full in Exhibit 15.1.4-A of the Master Lease. Further, the Army EDC Deed provides that all of the environmental protection provisions of the Army EDC Deed shall be included either verbatim or by reference into any transfer of the EDC Property or any interest therein. The Army EDC Deed is provided in full in Exhibit 15.1.4-B of the Master Lease. Required notices and copies of the Restrictive Covenant and Army EDC Deed shall also be provided in all relevant agreements flowing from this Sublease and any subsequent subleases. Subtenant covenants that it will include or reference the Restrictive Covenant and Army EDC Deed in each of its future subleases, if any.

3.3 Subtenant Improvements. Subtenant shall be responsible to construct, at its sole cost and expense, any improvements to the Subleased Premises ("Improvements") necessary to operate the Subleased Premises for the use described in Section 5.1, below (the "Initial Improvements"). All Improvements shall be constructed in accordance with the requirements of this Sublease, the applicable requirements of the Master Lease, and any applicable requirements of the Federal Railroad Administration.

(a) Approval of Construction Documents. Prior to the construction of any Initial Improvements, Subtenant shall prepare and submit to Sublandlord, for review and written approval hereunder, reasonably detailed schematic drawings, and following Sublandlord's

approval of such schematic drawings, preliminary and final construction documents which are consistent with the approved schematic drawings (collectively, schematic drawings, preliminary and final construction documents are referred to as "Construction Documents"). Sublandlord may waive the submittal requirement of schematic drawings for a particular Initial Improvement if it determines in its discretion that the scope of such Initial Improvement does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Sublandlord shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) calendar days after submission. Any disapproval shall state in writing the reasons for disapproval. If Sublandlord deems the Construction Documents incomplete, Sublandlord shall notify Subtenant of such fact within twenty-one (21) calendar days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Sublandlord notifies Subtenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Sublandlord disapproves Construction Documents, and Subtenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of this Section 3.3(a), Sublandlord shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Sublandlord's previous notice of rejection, and Sublandlord shall approve or disapprove the revisions to the Construction Documents within fifteen (15) calendar days after resubmission. If Sublandlord fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 3.3(a), such failure shall not constitute an Event of Default under this Sublease on the part of Sublandlord, but such Construction Documents shall be deemed approved by the Sublandlord, provided that Subtenant first provides Sublandlord with at least ten (10) calendar days prior written notice that Subtenant intends to deem said Construction Documents so approved. Notwithstanding any provision herein to the contrary, the review or approval by or on behalf of Sublandlord of any Construction Documents or Improvements hereunder shall not constitute any representation, warranty or agreement by Sublandlord, express or implied, with respect to the adequacy, sufficiency, completeness, utility, safety or functionality of the subject Improvements and, without limitation, the release, waiver and other provisions of this Sublease shall in any event be deemed to apply with respect to any such review and approval by or on behalf of Sublandlord.

(b) Sublandlord Approval of Revised Construction Documents. Upon receipt by Subtenant of a disapproval of Construction Documents from Sublandlord, Subtenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Sublandlord's written objections. Subtenant shall resubmit such revised portions to Sublandlord as soon as possible after receipt of the notice of disapproval. Sublandlord shall approve or disapprove such revised portions in the same manner as provided in Section 3.3(a) for approval of Construction Documents (and any proposed changes therein) initially submitted to Sublandlord. If Subtenant desires to make any substantial change in the Final Construction Documents after Sublandlord has approved them, then Subtenant shall submit the proposed change to Sublandlord for its reasonable approval. Sublandlord shall notify Subtenant in writing of its approval or disapproval within fifteen (15) calendar days after submission to Sublandlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15) day period.

(c) Construction Permits. Subtenant, at its cost, shall be responsible for applying for and diligently pursuing the issuance of, and thereafter compliance with, all permits and other Regulatory Approvals, including any required environmental certification, allowing construction and development of the Initial Improvements related to the Subleased Premises (the "Construction Permits"). Upon request by Sublandlord, Subtenant shall provide to Sublandlord copies of all Construction Permits obtained by Subtenant for work to be performed on the Subleased Premises.

(d) Construction Schedule and Reports. All construction with respect to the Project shall be accomplished expeditiously and diligently. During periods of construction, Subtenant shall submit to Sublandlord written progress reports when and as reasonably requested by Sublandlord.

(e) Conditions to Commencement of Construction. Notwithstanding any provision herein to the contrary, Subtenant shall not commence construction of any Initial Improvements related to the Subleased Premises until all of the following conditions and requirements have been satisfied by Subtenant or waived by Sublandlord (which waiver shall be in Sublandlord's sole and absolute discretion) with respect to such Initial Improvements:

(1) Sublandlord shall have approved the Final Construction Documents;

(2) Subtenant shall have obtained all Construction Permits; and

(3) If requested by Sublandlord, Subtenant shall have submitted to Sublandlord the following bonds (or equivalent security, which may include a letter of credit, acceptable to Sublandlord in its sole and absolute discretion) issued by a licensed surety, naming the Sublandlord or Master Landlord, or both, as co-obligees or assignees, and in a form satisfactory to Sublandlord (the "Construction Bonds"): (i) a performance bond in an amount not less than one hundred percent (100%) of the cost of construction of the Initial Improvements required to be built by Subtenant under this Sublease, based upon the Initial Improvements Construction Contract, as security for the faithful performance of such construction; and (ii) a labor and material payment bond in an amount not less than one hundred percent (100%) of the cost of construction of the Initial Improvements pursuant to the applicable construction contract, as security for payment to persons performing labor and furnishing materials in connection with such construction.

(f) Construction Standards. All construction of the Initial Improvements shall be accomplished in accordance with the Construction Documents and good construction and engineering practices and applicable Laws.

(g) Safety Matters. Subtenant shall undertake commercially reasonable measures in accordance with good construction practices (consistent with the requirements of the Community Benefits) to minimize the risk of injury, damage, disruption or inconvenience to the Subleased Premises and Improvements and surrounding property, or the risk of injury to members of the public, caused by or resulting from such construction. Subtenant shall make adequate provision for the safety and convenience of all persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction

and maintaining them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(h) Costs of Construction. As between Sublandlord and Subtenant, Subtenant shall bear and pay all costs and expenses of construction of any Improvements made by Subtenant, including, but not limited to the Initial Improvements, whether onsite or offsite, including, without limitation, the cost of connections to existing utility lines in adjacent rights-of-way, and any and all cost overruns. Without limiting the preceding provisions, Subtenant shall be responsible for performing all site preparation work necessary for construction of the Initial Improvements. Such preparation shall include, without limitation, the Remediation and Handling of Hazardous Materials, disabled access, improvements, demolition of existing structures, grading and all structure and substructure work, and public access improvements.

(i) Rights of Access. During any period of construction, Sublandlord and its Agents shall have the right to enter areas in which construction is being performed, on reasonable prior notice during customary construction hours, subject to Subtenant's right of quiet enjoyment under this Sublease, to inspect the progress of the work. Nothing in this Sublease, however, shall be interpreted to impose an obligation upon Sublandlord to conduct such inspections or any liability in connection therewith.

(j) BCDC Permits. Subtenant shall be responsible for obtaining its own Regulatory Approvals (including, without limitation, any required BCDC Permit) for the Improvements to be constructed by Subtenant pursuant to this Lease. If BCDC or any other governmental/regulatory agency requires the construction of open space improvements as a condition to the issuance of a permit required for any Subtenant Improvements, and provided that such open space improvements are permitted by the Public Trust, City shall grant Subtenant a right of entry (in a form reasonably acceptable to both Parties) to construct such open space improvements in City-owned open space located west of the West Gateway. The Parties shall take such steps as are necessary to cause the Special District to fund the maintenance of such open space improvements. Until such time as the Special District has annexed these areas, any maintenance and/or services required for such open space improvements shall be paid annually in advance to City by Subtenant.

(k) Post-Completion Deliverables. Upon request by Sublandlord, Subtenant shall furnish to Sublandlord one set of as-built plans and specifications with respect to the Initial Improvements. If Subtenant fails to provide such as-built plans and specifications to Sublandlord, and such failure continues for an thirty (30) calendar days following written request from Sublandlord, Sublandlord will thereafter have the right to cause an architect or surveyor selected by Sublandlord to prepare as-built plans and specifications showing such Initial Improvements, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Subtenant to Sublandlord as Additional Rent. Nothing in this Section 3.3(k) shall limit Subtenant's obligations, if any, to provide plans and specifications in connection with the Initial Improvements under applicable regulations adopted by the Master Landlord in its regulatory capacity.

3.4 Minor Alterations. Without limiting, but subject to, the provisions of Section 3.3, Sublandlord's approval hereunder shall not be required for (a) the installation, repair or

replacement of such improvements to the interior of any building commonly encompassed, and generally commercially understood to be included, within "tenant improvements," furnishings, fixtures, equipment or decorative Improvements or repair or replacement of worn out or obsolete components of the Improvements which do not materially affect the structural integrity of the Improvements, (b) recarpeting, repainting the interior or exterior of the Subleased Premises, groundskeeping, or similar alterations, or (c) any other additional construction which does not require a building permit (collectively, "Minor Alterations").

3.5 Title to Improvements. During the Term of this Sublease, Subtenant shall own all of the Improvements, including all additional construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Sub-Subtenants). During the Term, for federal income tax purposes, Subtenant shall be the "tax owner" of the Improvements, including all additional construction, and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Sub-Subtenants) and shall be entitled to depreciation deductions and any tax credits with respect to the Improvement, including all additional construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Sub-Subtenants). At the expiration or earlier termination of this Sublease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Subtenant and its Sub-Subtenants other than Sublandlord), will vest in Sublandlord without further action of any Party, and without compensation or payment to Subtenant. Subtenant and its Sub-Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Sublease, to remove Personal Property from the Subleased Premises; provided, however, that if the removal of Personal Property causes damage to the Subleased Premises, Subtenant shall promptly cause the repair of such damage at no cost to Sublandlord.

#### ARTICLE 4 -- RENT

4.1 Rent. Commencing on the Rent Commencement Date and continuing on the first day of each calendar month thereafter, during the Term, Subtenant will pay as Rent for the Subleased Premises, that portion of Rent due under the Master Lease which is applicable to the Subleased Premises and Subtenant's use of the Subleased Premises, including Base Rent and Participation Rent, in accordance with the terms of Sections 2.2 and 2.3 of the Master Lease, respectively. Rent that is due for any partial calendar month will be prorated on a per diem basis, based upon the actual number of days in that month.

(a) Base Rent. Initially, the amount of monthly Base Rent due under the Master Lease with respect to the Subleased Premises is \$17,656.08 per month. The foregoing amount is subject to adjustment as provided in the Master Lease, including, but not limited to, Section 2.2.2.1 (square footage adjustments), Section 2.2.1.2 (first adjustment period), and Section 2.2.1.3 (remaining term adjustment).

(b) Participation Rent. In addition to Base Rent payable under Section 4.1(a) above, Subtenant shall pay to Sublandlord all Participation Rent as and when payable under Section 2.3 of the Master Lease with respect to Subtenant's use of the Subleased Premises.

(c) Payment Obligation. Subtenant shall pay Base Rent to Sublandlord not later than thirty (30) days after the commencement of each calendar quarter during each Lease Year, and Participation Rent at the same time as, and together with Base Rent (subject to annual reconciliation as provided in the Master Lease). Rent shall be paid to Sublandlord, at Sublandlord's address set forth in Section 1.1 above, or to such other person or place as Sublandlord designates to Subtenant in writing (including, without limitation, directly to Master Landlord), without written demand or notice, and without deduction or offset. Rent that is due for any partial calendar month will be prorated on a per diem basis, based upon the actual number of days in that month. The Security Deposit, if any, is due upon the Commencement Date of this Sublease, and will be held as security for the full, faithful and timely performance of every provision of this Sublease to be performed by Subtenant. As used in this Sublease, "Lease Year" means a period of twelve (12) consecutive months during the Term, commencing on the Commencement Date and continuing for twelve (12) consecutive calendar months thereafter.

(d) Abatement/Credits. Notwithstanding anything to the contrary contained in the Master Lease, Subtenant shall not be entitled to any rent abatement, credits or reimbursement granted to Sublandlord under the Master Lease, including, but not limited to, the West Gateway Pre-Paid Rent, City Rail Fee, and any abatement under Section 2.2.3.2 of the Master Lease during periods in which an Affiliate of Sublandlord is not the Rail Operator for the Port Rail Terminal.

#### 4.2 Payment of Possessory Interest, Taxes and Other Impositions.

(a) Possessory Interest Taxes. To the extent applicable, Subtenant shall pay or cause to be paid, prior to delinquency, all Impositions comprised of possessory interest and property taxes assessed, levied or imposed on the Subleased Premises or any of the Improvements or Personal Property (excluding the personal property of any Sub-Subtenant whose interest is separately assessed) located on the Subleased Premises or Subtenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Sub-Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.2(c)). Subject to the provisions of Section 4.4, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Subtenant to pay such taxes in installments, Subtenant may elect to do so. In addition, Subtenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Subtenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 4.4.

(b) Other Impositions. Without limiting the provisions of Section 4.2(a), Subtenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.2(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Subleased Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Sub-Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Subtenant, any Sub-

Subtenant or any other Person may have acquired pursuant to this Sublease (but excluding any such Impositions separately assessed, levied or imposed on any Sub-Subtenant). Subtenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Subtenant to pay any such Imposition in installments, Subtenant may elect to do so. In addition, Subtenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. The foregoing or any other provision in this Sublease notwithstanding, Subtenant shall not be responsible for any Impositions arising from or related to, Sublandlord's leasehold interest in the Property or premises (including, without limitation, any real property taxes or assessments), the Sublandlord's interest as sub-landlord under this Sublease or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Sublandlord's leasehold interest or a transfer thereof.

(c) Prorations. All Impositions imposed for the Tax Fiscal Years in which the Commencement Date occurs or during the tax year in which the Termination Date occurs shall be apportioned and prorated between Subtenant and Sublandlord on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Sublandlord's written request which Sublandlord may give at any time and give from time to time, Subtenant shall deliver to Sublandlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Sublandlord, evidencing the timely payment of such Impositions.

4.3 Sublandlord's Right to Pay. Unless Subtenant is exercising its right to contest under and in accordance with the provisions of Section 4.4, if Subtenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Sublandlord, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Sublandlord shall give Subtenant written notice specifying a date at least ten (10) Business Days following the date such notice is given after which Sublandlord intends to pay such Impositions. If Subtenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Sublandlord that it is contesting such Imposition pursuant to Section 4.4, then Sublandlord may thereafter pay such Imposition, and the amount so paid by Sublandlord (including any interest and penalties thereon paid by Sublandlord), together with interest at the Default Rate computed from the date Sublandlord makes such payment, shall be deemed to be and shall be payable by Subtenant as Additional Rent, and Subtenant shall reimburse such sums to Sublandlord within ten (10) Business Days following demand.

4.4 Right of Subtenant to Contest Impositions and Liens. Subtenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Subleased Premises or any portion of, or interest in, the Subleased Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Subtenant or any Sub-Subtenant or other Person to improve the Subleased Premises or any portion of the Subleased Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Sublandlord.

Subtenant shall give notice to Sublandlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Sublease shall require Subtenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Subleased Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Subtenant shall be responsible for complying with such condition as a condition to its right to contest. Subtenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Subtenant shall provide a statutory lien release bond or other security reasonably satisfactory to Sublandlord in any instance where Sublandlord's interest in the Subleased Premises may be subjected to such lien or claim. Subtenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Sublandlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Sublandlord or any owner of the Subleased Premises, Sublandlord, at the request of Subtenant and at no cost to Sublandlord, with counsel selected and engaged by Subtenant, subject to Sublandlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Sublandlord, at its own expense and at its sole and absolute option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Sublandlord or any owner of the Subleased Premises. Except as provided in the preceding sentence, Sublandlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Section 13.5, Subtenant shall Indemnify Sublandlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Sublandlord may be legally obligated to pay.

4.5 Sublandlord's Right to Contest Impositions. At its own cost and after notice to Subtenant of its intention to do so, Sublandlord may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Sublandlord to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Subleased Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Sublandlord shall give notice to Subtenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

4.6 Application of Security Deposit. If Subtenant defaults with respect to any provision of this Sublease, including, but not limited to, the provisions relating to the payment of Rent, Sublandlord may use, apply or retain all or any part of the Security Deposit, if any, for the payment of any Rent, or any other sum in default. If any portion of the Security Deposit is so used, applied, or retained, Subtenant will within five (5) days after written demand from Sublandlord, deposit cash with Sublandlord in an amount sufficient to restore the Security Deposit to its original amount. In no event shall Sublandlord be required to apply the Security

Deposit. Subtenant may not apply the Security Deposit to the payment of Rent or the performance of other obligations. Unless otherwise required by law, Sublandlord will not be required to keep the Security Deposit separate from its general funds and may commingle the Security Deposit with its own funds. Subtenant will not be entitled to interest on the Security Deposit. The Security Deposit will not be deemed a limitation on Sublandlord's damages or a payment of liquidated damages or a payment of the Rent due for the last month of the term. If Subtenant fully, faithfully and timely performs every provision of this Sublease to be performed by it, any balance of the Security Deposit will be returned to Subtenant within sixty (60) days after the later of the expiration of the Term or Subtenant's vacation of the Subleased Premises.

## ARTICLE 5 -- USE

5.1 Use. The Subleased Premises may be used for any and all rail-related activities that are permitted by applicable laws and the terms of the Master Lease, as well as any other uses expressly permitted by the Master Lease (the "Permitted Uses"). Subtenant will not commit waste or suffer or permit waste to be committed in, on, or about the Subleased Premises. Subtenant will use the Subleased Premises in a careful, safe, and proper manner. Subtenant will conduct its business and control its employees, agents, and invitees in such a manner as not to create any nuisance or interfere with, annoy, or disturb Master Landlord in its operation of the Army Base or any other tenant or occupant of the Property.

5.2 Special Provisions for Railroad R/O/W Property and Railroad Crossings. Subtenant agrees that, notwithstanding any provision in the Master Lease to the contrary, Subtenant's use of the Subleased Premises and the Railroad Crossings shall at all times during the Term be subject to and in accordance with the terms and conditions of the EBMUD MOA with respect (and to the extent applicable) to the Subleased Premises and Railroad Crossings. Subtenant acknowledges that each of the tenants under, and pursuant to, the leases for the New Central Gateway, MH-1, East Gateway CE-1 or East Gateway CE-2 has been granted a similar non-exclusive right to access and use the Subleased Premises and Rail Crossings for rail access. Subtenant shall cooperate with such other tenants in order to ensure the safe and orderly use of the Subleased Property and Railroad Crossings under this Sublease, the EBMUD MOA, and the New Central Gateway, MH-1, East Gateway CE-1 and East Gateway CE-2 Leases; provided, however, that the foregoing cooperation obligation of Subtenant (or any failure by Subtenant to so cooperate) and such cooperation by such other tenants (or any failure by such other tenants to so cooperate) shall not act to amend or modify this Sublease or any such other lease or EBMUD MOA and shall not modify, relieve or release Subtenant from any of its obligations hereunder or any such other tenant from any of its obligations under any such other lease or EBMUD MOA. Subtenant further acknowledges that, subject to the occurrence of all Shared Rail Prerequisites, Subtenant's use of that portion of the Subleased Premises containing the Shared Rail Area also shall be subject to the Port Rail Easement and the provisions set forth above in this Section 5.2 regarding cooperation by Subtenant also shall extend to any such Port Rail Access during the period thereof.

## ARTICLE 6 -- SERVICES; MAINTENANCE AND REPAIR

6.1 Utility Services. Sublandlord shall not be required to provide any utility services to the Subleased Premises or any portion of the Subleased Premises. Subtenant and its Sub-

Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Subleased Premises are put (it being acknowledged that City is the sole and exclusive provider to the Subleased Premises of certain public utility services). Subtenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Subleased Premises or any part of the Subleased Premises, and will do all other things required for the maintenance and continuance of all such services. Subtenant agrees, with respect to any public utility services provided to the Subleased Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Subtenant and Sublandlord under this Sublease, or entitle Subtenant to terminate this Sublease or to claim any abatement or diminution of Rent. Further, Subtenant covenants not to raise as a defense to its obligations under this Sublease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Subtenant and Sublandlord relating to this Sublease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Subtenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Subleased Premises.

6.2 Maintenance and Repair. Throughout the Term of this Sublease, Subtenant shall maintain and repair, at no cost to Sublandlord, the Subleased Premises, in good condition and repair, and in compliance with all applicable Laws and the requirements of this Sublease. Subtenant shall promptly make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Subtenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Sublandlord under this Sublease, or, if not originally subject to Sublandlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Subtenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements. Except as otherwise provided in the Master Plan, Development Agreement or PUD or elsewhere in this Sublease, and subject to the provisions of Section 4.2, Subtenant shall not be obligated to maintain any public utilities or public infrastructure located in any dedicated public rights of way. Without limiting the foregoing, Subtenant hereby waives any right to make repairs at Sublandlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

6.3 Damage. Subtenant will immediately advise Sublandlord and Master Landlord of any damage to the Subleased Premises or the Property. All damage or injury to the Subleased Premises, or the Property, or the fixtures, appurtenances and equipment in the Subleased Premises or the Army Base which is caused by Subtenant, its agents, employees, or invitees, may be repaired, restored or replaced by Sublandlord or Master Landlord, at the expense of Subtenant. Such expense will be collectible as Additional Rent and will be paid by Subtenant within ten (10) days after delivery of a statement for such expense.

## ARTICLE 7 -- INSURANCE

7.1 Subtenant's Insurance. Subtenant shall, at no cost to Sublandlord, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of: (i) the last day of the Term; (ii) the last day Subtenant (A) is in possession of the Subleased Premises or (B) has the right of possession of the Subleased Premises; or (iii) such other date specified on Exhibit 14.1 of the Master Lease, the types and amounts of insurance specified on Exhibit 14.1 of the Master Lease, and in addition to the requirements set forth in the Master Lease, the Commercial General Liability policy shall also name Sublandlord as an additional insured, and the workers' compensation policy shall contain a subrogation endorsement in favor of Sublandlord.

7.2 Certificates. In addition to the requirements set forth in Article 14 of the Master Lease, Subtenant shall deliver to Sublandlord and Master Landlord, prior to Subtenant's occupancy of the Subleased Premises, and from time to time at least ten (10) calendar days prior to the expiration of the term of each such policy, certificates of insurance, together with copies of the endorsements when applicable. All Commercial General Liability and property policies maintained by Subtenant will be written as primary policies, and any insurance that Sublandlord may carry shall be excess to and not contributory with any insurance required hereunder.

7.3 Waiver of Subrogation. In addition to any requirement therefor in the Master Lease, Sublandlord and Subtenant each waives any and all rights to recover against the other or against any other tenant, subtenant, or occupant of the Property or Subleased Premises, or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of such other party or of such other tenant or occupant of the Property, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried by such Party pursuant to this Article 7 or any other property insurance actually carried by such party to the extent of the limits of such policy. Sublandlord and Subtenant, from time to time, will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Property or the Subleased Premises or the contents of the Property or the Subleased Premises. Subtenant agrees to cause all other occupants of the Subleased Premises claiming by, under or through Subtenant to execute and deliver to Sublandlord such a waiver of claims and to obtain such waiver of subrogation rights endorsements.

## ARTICLE 8 -- COMPLIANCE WITH LAWS

8.1 Subtenant Compliance. During the Term, Subtenant and its use and operation of the Subleased Premises shall comply, at no cost to Sublandlord, with all applicable Laws (including Regulatory Approvals). It is understood and agreed that Subtenant's obligation to comply with Laws shall include the obligation to make, at no cost to Sublandlord, all additions to, modifications of, and installations on the Subleased Premises that may be required by any Laws regulating the Subleased Premises. This Section 8.1 shall not apply to compliance with Laws (including Regulatory Approvals) which relate to Hazardous Materials, such compliance being governed exclusively by Article 8.3 hereof, or to contests of any Imposition or other lien, such contests being exclusively governed by Article 4 hereof. Notwithstanding anything to the contrary herein, Subtenant shall not be in default hereunder for failure to comply with any Laws

or insurance requirements if Subtenant is contesting the applicability of such Laws (including Regulatory Approvals) to Subtenant or this Sublease, or insurance requirements diligently and in good faith by appropriate proceedings and at no cost to Sublandlord, provided that any such contest shall not relieve or release Subtenant from its obligation to pay all or any portion of Rent hereunder, that Subtenant shall indemnify Sublandlord against and hold Sublandlord harmless from any Losses resulting from such contest, and that such contest shall not result in the loss or suspension of the insurance coverage required to be maintained by Subtenant hereunder.

(a) Unforeseen Requirements. The Parties acknowledge and agree that Subtenant's obligation under this Section 8.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Sublease.

(1) Subtenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Subleased Premises or the Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Sublease, the length of the then remaining Term hereof, the relative benefit of the repairs to Subtenant or Sublandlord, the degree to which curative action may interfere with Subtenant's use or enjoyment of the Subleased Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Subtenant's particular use of the Subleased Premises;

(2) Except as stated herein, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Subtenant of its obligations hereunder, nor give Subtenant any right to terminate this Sublease in whole or in part or to otherwise seek redress against Sublandlord; and

(3) Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Sublease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

(b) Proof of Compliance. Upon request by Sublandlord, Subtenant shall promptly provide Sublandlord with evidence of its compliance with any of the obligations required under this Section 8.1.

## 8.2 Regulatory Approvals.

(a) City Approvals. Subtenant acknowledges and agrees that City entered into the Master Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a governmental regulatory agency and that the status, rights and obligations of Master Landlord, in such proprietary capacity, are separate and independent from the status, functions, powers, rights and obligations of the City in such governmental regulatory capacity, and that nothing in the Master Lease or this Sublease shall be deemed to limit or restrict City in the exercise of its governmental regulatory powers and authority with respect to Subtenant, the Subleased Premises or otherwise, or to render Sublandlord obligated or liable under this Sublease for any acts of omissions of the City in connection with the exercise of its independent

governmental regulatory powers and authority. Without limiting the preceding sentence, Subtenant acknowledges that the Permitted Uses do not limit Subtenant's responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees and satisfy all related conditions of approval) for such uses, including but not limited to, the Master Plan, PUD or building permits, nor do such uses limit the City's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. Subtenant understands that the entry by the Master Landlord into the Master Lease and entry by the Sublandlord into this Sublease shall not be deemed to imply that Subtenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Subleased Premises, including the Master Landlord itself in its regulatory capacity. By entering into this Sublease, the Sublandlord is in no way modifying Subtenant's obligations to cause the Subleased Premises to be used and occupied in accordance with all Laws, as provided herein. Subject to the preceding provisions of this Section 8.2, nothing herein shall be deemed to limit the rights and obligations of City under the Master Plan, PUD or Development Agreement as they pertain to the Permitted Uses, the Scope of Development and the review and approval of planned Improvements.

(b) Approval of Other Agencies; Conditions.

(1) Requirements for Regulatory Approvals. The Parties acknowledge that the Project and Subtenant's contemplated uses and activities on the Subleased Premises, any subsequent changes in Permitted Uses, and any construction or alterations of Improvements, may require that Regulatory Approvals be obtained from governmental agencies (other than City) with jurisdiction over the Subleased Premises or the Project. Subtenant shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section. The Parties shall cooperate in such efforts. In any instance where Sublandlord will be required to act as a co-permittee, and in instances where modifications are sought from any other agencies, or where Subtenant proposes the construction of any Improvements which requires the City's or Sublandlord's approval, Subtenant shall not apply for any Regulatory Approvals (other than a building permit from City) without first obtaining the approval of the City or Sublandlord (as applicable), which approval (except as otherwise expressly provided therein) will not be unreasonably withheld, conditioned or delayed. Subtenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any regulatory agency other than City, if City is required to be a co-permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of the City whether on or off the Subleased Premises, unless in each instance the City has previously approved such conditions in writing in the City's sole and absolute discretion. Except as expressly contemplated under the terms of this Sublease, Subtenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any regulatory agency (including the City), if Sublandlord is required to be a co-permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of Sublandlord whether on or off the Subleased Premises, unless in each instance Sublandlord has previously approved such conditions in writing in Sublandlord's sole and absolute discretion. No such approval by Sublandlord or the City shall limit Subtenant's obligation to pay all the costs of complying with such conditions under this Section. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by

Subtenant. Subtenant shall be responsible for complying during the Term of this Sublease, at no cost to Sublandlord or the City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of Sublandlord or the City (as applicable, which shall not be unreasonably withheld or delayed), Subtenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Subtenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Subtenant to comply with the terms and conditions of any Regulatory Approval and Sublandlord and the City shall have no liability for such fines and penalties. Subtenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which any of the Indemnified Parties may be liable in connection with Subtenant's failure to comply with any Regulatory Approval.

(2) Cooperation. The Parties agree to communicate regularly and to cooperate in good faith regarding Subtenant's efforts to obtain Regulatory Approvals for the Project from any regulatory agency including the City. The Parties' obligation to cooperate in good faith shall include, but not be limited to, meeting and conferring as necessary, joint invitations to and attendance at meetings, copies of correspondence, and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Project and this Sublease; provided, however, that Sublandlord shall have no obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.

(c) Third Party Agreements. Subject to the Parties' cooperation obligations under this Sublease, Sublandlord shall use commercially reasonable efforts (consistent with its rights under the Master Lease) to ensure that City use its best efforts to perform any of its remaining obligations, and to secure the material benefit of its rights, under those agreements with third parties listed in Exhibit 8.2(c) attached to this Sublease (collectively, "Third Party Agreements") and Sublandlord shall use commercially reasonable efforts (consistent with its rights under the Master Lease) to ensure that City shall not seek or agree to amend the provisions of such Third Party Agreements without Subtenant's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

### 8.3 Hazardous Materials.

(a) City's and Sublandlord's Disclosure. Subtenant hereby acknowledges the disclosures by the City to Sublandlord set forth in Article 15 of the Master Lease, and agrees that such disclosures shall be deemed to have been made by City and Sublandlord to Subtenant hereby.

(b) Subtenant Responsibilities during Term. During the Term of this Sublease, with the exception of (i) City's obligations for Regulatory Reopeners, Subtenant accepts the Subleased Premises "As-Is, Where-Is" and as between Subtenant and Sublandlord, Subtenant shall be responsible (except to the extent City, Sublandlord or any of their contractors or employees cause or contribute to such conditions) for all Hazardous Materials and Remediation and Handling required on, under or about the Subleased Premises during its tenancy, the Environmental Remediation Requirements and the coordination procedure set forth in the Master Lease.

## ARTICLE 9 -- MASTER LEASE; ASSIGNMENT

### 9.1 The Master Lease.

(a) This Sublease is subject and subordinate in all respects to the Master Lease and the rights of Master Landlord thereunder, and Subtenant shall comply with all obligations of Sublandlord under the Master Lease with respect to the Subleased Premises, including, but not limited to, the Community Benefits Program with respect thereto.

(b) Subtenant shall use the Subleased Premises for the Permitted Uses set forth herein, and only to the extent such uses are permitted under Article 3 of the Master Lease.

(c) In no event shall the Term of this Sublease extend beyond the term of the Master Lease unless Master Landlord approves such longer sublease term, which may be withheld in Master Landlord's sole and absolute discretion.

(d) Subtenant shall indemnify Master Landlord for any loss or damage arising from Subtenant's use or occupancy of the Subleased Premises, as more particularly set forth in Section 13.4, below.

(e) Subtenant shall name Master Landlord as an additional insured on the liability insurance required to be carried by Subtenant under this Sublease, which liability insurance shall be in an amount and otherwise in accordance with the requirements for subtenant insurance set forth in Section 7.1 and Exhibit 14.1 of the Master Lease.

(f) Subject to the prior rights of any Mortgagee, if requested by Master Landlord, Subtenant and Sublandlord hereby agree to amend this Sublease to include a provision satisfactory to Master Landlord, requiring Subtenant (at Master Landlord's option) to attorn to Master Landlord if Sublandlord defaults under the Master Lease and if the Subtenant is notified of Sublandlord's default and instructed to make Subtenant's rental payments to Master Landlord. As used herein, a "Mortgagee" means the holder or holders of a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Subtenant's leasehold interest under this Sublease that is recorded in the Official Records (multiple financial institutions participating in a single financing secured by a single mortgage shall be deemed a single Mortgagee for purposes of this sublease).

(g) Subtenant acknowledges that it has received a copy of the Master Lease, and is familiar with the terms and conditions thereof. Subtenant will not cause or allow to be caused any default under the Master Lease, and shall indemnify, defend and hold Sublandlord harmless against any loss, liability (other than defaults caused solely by Sublandlord), and expenses (including reasonable Attorneys' Fees and Costs) arising out of any default under the Master Lease by Subtenant. If the Master Lease terminates for any reason prior to the expiration or termination of this Sublease, Subtenant shall not have any claim whatsoever against Sublandlord arising or resulting from such termination of the Master Lease unless directly caused by the default of Sublandlord; provided, however, that Sublandlord shall in no way be liable under any circumstances for any indirect, consequential, special, punitive, treble, or exemplary damages.

9.2 Sublandlord's Performance Conditioned on Master Landlord's Performance. Subtenant recognizes that Sublandlord is not in a position to render any of the services or to perform any of the obligations required of Master Landlord by the terms of the Master Lease. Therefore, despite anything to the contrary in this Sublease, Subtenant agrees that performance by Sublandlord of its obligations under this Sublease is conditioned on performance by the Master Landlord of its corresponding obligations under the Master Lease, and Sublandlord will not be liable to Subtenant for any default by the Master Landlord under the Master Lease. Subtenant will not have any claim against Sublandlord based on the Master Landlord's failure or refusal to comply with any of the provisions of the Master Lease unless that failure or refusal is a result of Sublandlord's act or failure to act. Despite the Master Landlord's failure or refusal to comply with any of those provisions of the Master Lease, this Sublease will remain in full force and effect and Subtenant will pay the Rent and Additional Rent and all other charges provided for in this Sublease without any abatement, deduction or setoff.

9.3 Obtaining Master Landlord's Consent. Whenever the consent of the Master Landlord is required under the Master Lease, and whenever the Master Landlord fails to perform its obligations under the Master Lease, Sublandlord agrees to use its reasonable, good faith efforts to obtain, at Subtenant's sole cost and expense, that consent or performance on behalf of Subtenant.

9.4 Sublandlord's Warranties. Sublandlord warrants to Subtenant that:

(a) The Master Lease is in full force and effect.

(b) To Sublandlord's actual knowledge, there are no existing circumstances that would allow the termination of the Master Lease by Master Landlord after the giving of notice or the passage of time or both.

9.5 Assignment and Subletting. Subject to the rights of the Master Landlord and the restrictions contained in the Master Lease in connection with Transfers, no portion of the Subleased Premises or of Subtenant's interest in this Sublease may be acquired by any other person or entity, whether by assignment, mortgage, sublease, transfer, operation of law or act of Subtenant, without the prior written consent of Sublandlord, which consent may be withheld by Sublandlord in its sole discretion. Any attempted transfer without the required consent shall be void and shall constitute a non-curable breach of this Sublease. Consent by Master Landlord in one such instance shall not be a waiver of Master Landlord's rights under this Section as to requiring consent for any subsequent instance. Subtenant shall be responsible for any and all costs and expenses payable to Master Landlord in connection with the proposed assignment or subletting.

9.6 Consent. If required under the Master Lease, the effectiveness of this Sublease is conditioned upon Master Landlord's written consent to this Sublease (the "Consent"). If Master Landlord's consent is required under the Master Lease, then concurrently with the execution of this Sublease, Sublandlord and Subtenant shall execute and deliver the Consent to Master Landlord, and Sublandlord shall use commercially reasonable efforts to obtain the Consent, signed by Master Landlord, on or before the Commencement Date.

## ARTICLE 10 -- DEFAULT

10.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Sublease:

(a) Subtenant fails to pay any Rent or Additional Rent to Sublandlord when due, which failure continues for five (5) calendar days following written notice from Sublandlord (it being understood and agreed that the notice required to be given by Sublandlord under this section shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section) provided, however, Sublandlord shall not be required to give such notice on more than three (3) occasions during any Lease Year, and failure to pay any Rent or Additional Rent for the remainder of such Lease Year when due shall be an immediate Event of Default for the remainder of such Lease Year without need for further notice;

(b) Subtenant files a petition for relief, or an order for relief is entered against Subtenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Subtenant are not dismissed or stayed within ninety (90) calendar days;

(c) A writ of execution is levied on the leasehold estate which is not released within ninety (90) calendar days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Subtenant, which appointment is not dismissed within ninety (90) calendar days;

(d) Subtenant makes a general assignment for the benefit of its creditors;

(e) Subtenant abandons the Subleased Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within ten (10) calendar days after notice of belief of abandonment from Sublandlord;

(f) Subtenant fails to maintain any insurance required to be maintained by Subtenant under this Sublease; provided, however, that, notwithstanding any provision herein to the contrary, Sublandlord shall not have any right to terminate this Sublease for such failure unless (a) such failure continues without cure for five (5) Business Days after written notice thereof from Sublandlord, or (b) such failure occurs two or more times during any five consecutive Lease Years, with or without notice thereof from Sublandlord;

(g) Subtenant violates any other covenant, or fails to perform any other obligation to be performed by Subtenant under this Sublease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues without cure for more than twenty (20) calendar days after written notice from Sublandlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such twenty (20) calendar day period, if Subtenant does not within such twenty (20) calendar day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter; or

(h) Subtenant suffers or permits an assignment of this Sublease or any interest therein to occur in violation of this Sublease, or sublets all or any portion of the Subleased Premises or Improvements in violation of this Sublease.

(i) Subtenant, its employees, agents, or invites engage in any illegal or prohibited activity on the Subleased Premises.

10.2 Sublandlord's Remedies. If any Event of Default occurs, then Sublandlord shall have the rights and remedies of Master Landlord described in Article 16 of the Master Lease, including, but not limited to, California Civil Code Section 1915.4. Sublandlord may also elect to cure any Event of Default and to charge Subtenant for the cost of effecting such cure, including, without limitation, reasonable attorneys' fees and Interest (defined in Section 13.10) from the date such monies are advanced; provided, however, that Sublandlord will have no obligation to cure any such event of default of Subtenant.

10.3 Remedies Not Exclusive. Each right and remedy provided for in this Sublease is cumulative and is in addition to every other right or remedy provided for in this Sublease or at law or in equity. If a dispute arises under the terms of this Sublease or if any payment required by this Sublease is not paid when due and the matter is turned over to an attorney, the prevailing party in the dispute will be entitled to receive its reasonable attorneys' fees in addition to the other damages and costs.

## ARTICLE 11 -- END OF TERM

11.1 End of Term. At the end of this Sublease, Subtenant will promptly quit and surrender the Subleased Premises in a broom-clean condition, in good order and repair, ordinary wear and tear excepted, and in compliance with the requirements of the Master Lease. Subtenant will remove all of Subtenant's personal property and equipment and shall repair any damage to the Subleased Premises as a result of such removal. Subtenant's obligations under this Section will survive the expiration or other termination of this Sublease.

11.2 Holding Over. Subtenant will have no right to remain in possession of all or any part of the Subleased Premises after the expiration of the Term. If Subtenant remains in possession of all or any part of the Subleased Premises after the expiration of the Term: (a) such tenancy will be deemed to be a tenancy at will; (b) such tenancy will not constitute a renewal or extension of this Sublease for any further term; and (c) such tenancy may be terminated by Sublandlord upon prior written notice to Subtenant on the earliest date permitted by law. In the event of holding over, Rent will be increased to an amount equal to 200% of the Rent payable during the last month of the Term, any other sums due under this Sublease will be payable in the amount and at the times specified in this Sublease, and any other damages or costs incurred by Sublandlord as a result of any violation of the Master Lease caused by Subtenant's failure to timely surrender the Subleased Premises. Such tenancy will be subject to every other term, condition, and covenant contained in this Sublease.

## ARTICLE 12 – SPECIAL PROVISIONS

### 12.1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Subtenant, in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Sub-Subleases and Other Sub-Subcontracts. Subtenant shall include in all Sub-Subleases and other subcontracts entered into by Subtenant relating to the Subleased Premises a non-discrimination clause applicable to such Sub-Subtenant or other subcontractor in substantially the form of Section 12.1(a).

12.2 Mitigation Measures. In order to mitigate the significant environmental impacts of this Sublease and operation of the Subleased Premises, Subtenant agrees that the operation of the Project shall be in accordance with the CEQA Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, applicable to the Project, attached to Master Lease as Exhibit 37.6, which are to be performed on the part of the Project sponsor ("Mitigation Measures"). As appropriate, Subtenant shall incorporate such Mitigation Measures into any contract for the operation of the Improvements.

12.3 Waiver of Relocation Assistance Rights. If Subtenant holds over in possession of the Subleased Premises following the expiration of this Sublease, Subtenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Article 10 relating to Condemnation, and Subtenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

12.4 Campaign Contribution Limits. This Sublease is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires City Council approval. The City of Oakland Campaign Reform Act prohibits developers that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, contract negotiations. Subtenant shall sign and date an Acknowledgement of Campaign Contribution Limits Form attached to the Master Lease Exhibit 37.5 and incorporated herein.

12.5 Community Benefits. The City and Sublandlord have previously negotiated and agreed upon a plan of Community Benefits related to the Project and Subtenant's performance of

this Sublease. As additional consideration for this Sublease, Subtenant hereby agrees to perform all of its applicable obligations set forth in Exhibit 37.6 of the Master Lease and incorporated herein in full by this reference.

12.6 Other Requirements. Subtenant shall operate and maintain the Subleased Premises in accordance with: (1) all applicable federal, state and local requirements for access for disabled persons; (2) the City's Equal Benefits Ordinance (O.M.C. § 2.32.10); and (3) environmental sustainability measures to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

### ARTICLE 13 -- MISCELLANEOUS

13.1 Condemnation. In the event that all of the Subleased Premises are taken, this Sublease shall terminate in accordance with the terms of the Master Lease. If less than all of the entire Subleased Premises are taken, the provisions of the Master Lease shall control with respect to whether this Sublease will be terminated as a result thereof, and with respect to restoration of the Subleased Premises. Subtenant shall have no right to share in any condemnation proceeds; provided, however, Subtenant shall have the right to submit a separate claim, if any, pursuant and subject to the provisions of the Master Lease. In no event will Sublandlord be in default under this Sublease or be liable to Subtenant or any other person for direct, indirect, or consequential damages, or otherwise, for any termination of the Master Lease pursuant to such provisions, or for any failure of Master Landlord to repair or restore the Subleased Premises or to otherwise perform any of its obligations under such condemnation provisions in the Master Lease. Subtenant hereby waives any rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

13.2 Casualty. In the event that the Subleased Premises shall be damaged by fire or other casualty, Sublandlord shall have no responsibility for restoration of the Subleased Premises. The casualty provisions of the Master Lease shall control with respect to termination of this Sublease and restoration of the Subleased Premises. In no event will Sublandlord be in default under this Sublease or be liable to Subtenant or any other person for direct, indirect or consequential damages, or otherwise, for any termination of the Master Lease pursuant to such provisions, or for any failure of Master Landlord to repair or restore the Subleased Premises or to otherwise perform any of its obligations under such casualty provisions in the Master Lease.

13.3 Right to Enter. Master Landlord, Sublandlord, and their respective contractors may enter the Subleased Premises at any time without notice to: (a) inspect the Subleased Premises; (b) make repairs required or permitted under the terms of the Master Lease or this Sublease; or (c) exercise remedies provided to Master Landlord or Sublandlord under the Master Lease or this Sublease. Sublandlord shall use commercially reasonable efforts not to disturb or interfere with the operation of Subtenant's business upon any entry to the Subleased Premises by Sublandlord. Any entry to the Subleased Premises by Master Landlord or Sublandlord in accordance with this Section will not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Subleased Premises or an eviction, actual or constructive, of Subtenant from the Subleased Premises, or any portion of the Subleased Premises, nor will any such entry

entitle Subtenant to damages or an abatement of Rent, Additional Rent, or other charges which this Sublease requires Subtenant to pay.

**13.4 Indemnification of Master Landlord and Sublandlord.** Subtenant agrees to and shall Indemnify Master Landlord and Sublandlord, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of their members, officers, directors, commissioners, employees, agents and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them (collectively, "Indemnified Parties") from and against any and all any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs (defined below) and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise (collectively, "Losses") imposed upon or incurred by or asserted against any such Indemnified Party, the Subleased Premises or Sublandlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Subleased Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Subleased Premises which is caused directly or indirectly by Subtenant or its Agents; (iii) any use, possession, occupation, operation, maintenance, or management of the Subleased Premises or any part thereof by Subtenant or any of its Agents, Invitees, or Sub-Subtenants; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Subleased Premises by Subtenant or any of its Agents; (v) any latent, design, construction or structural defect relating to the Initial Improvements located on the Subleased Premises and any additional Improvements constructed by or on behalf of Subtenant, and any other matters relating to the condition of the Subleased Premises caused by Subtenant or any of its Agents, Invitees, or Sub-Subtenants; (v) any failure on the part of Subtenant or its Agents or Sub-Subtenants, as applicable, to perform or comply with any of the terms of this Sublease or with applicable Laws, rules or regulations, or permits in connection with use or occupancy of the Subleased Premises; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Subleased Premises or any part thereof by Subtenant or any of its Agents, Invitees or Sub-Subtenants; and (viii) any other legal actions or suits initiated by any user or occupant of the Subleased Premises. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Subtenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Subtenant of such action, suit or proceeding. Subtenant may, and upon the request of such Indemnified Party will, at Subtenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Subtenant and reasonably approved by such Indemnified Party in writing. Notwithstanding the preceding provisions of this Section 13.4, Subtenant shall not be obligated to Indemnify the Indemnified Parties to the extent that any of the matters described in this Section (a) have arisen from any Indemnified Party's gross negligence or willful misconduct, (b) (solely with respect to the City) have arisen from any failure by City to meet its obligations under the Master Lease or (c) are covered by insurance policies required to be carried by Subtenant or Sublandlord under the terms of this Sublease. As used herein, "Attorneys' Fees and Costs" means reasonable attorneys' fees (including, with respect to Master Landlord, fees

from attorneys in the Office of the City Attorney of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

(a) Immediate Obligation to Defend. Subtenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 13.4 or any other indemnity provision under this Sublease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Subtenant by an Indemnified Party and continues at all times thereafter and provided further that, in the event it is later determined by a court of competent jurisdiction that the claim made falls outside the scope of the indemnity provisions of this Agreement, Sublandlord shall promptly reimburse Subtenant for Subtenant's reasonable attorney's fees and other costs incurred in defending such claim.

(b) Not Limited by Insurance. The insurance requirements and other provisions of this Sublease shall not limit Subtenant's indemnification obligations under Section 13.4 or any other indemnification provision of this Sublease.

(c) Survival. Subtenant's obligations under this Section 13 and any other indemnity in this Sublease shall survive the expiration or sooner termination of this Sublease as to occurrences prior to such termination.

(d) Other Obligations. The agreements to Indemnify set forth in this Section 13 and elsewhere in this Sublease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Subtenant may have to Sublandlord in this Sublease, at common law or otherwise.

(e) Defense. Subtenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Subtenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Sublandlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Subtenant shall fail, however, in Sublandlord's reasonable judgment, within a reasonable time (but not less than fifteen (15) days following notice from Sublandlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Sublandlord shall have the right promptly to hire outside counsel, at Subtenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Sublandlord ten (10) Business Days after receipt by Subtenant of an invoice therefor.

(f) Release of Claims Against Indemnified Parties. Subtenant, as a material part of the consideration of this Sublease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the

Subleased Premises for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of Sublandlord or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties and further excluding (solely with respect to the City) any claims with respect to City's obligations under the Master Lease.

13.5 Force Majeure. Sublandlord will have no liability to Subtenant, nor will Subtenant have any right to terminate this Sublease or abate Rent or assert a claim of partial or total actual or constructive eviction, because of Sublandlord's failure to perform any of its obligations in this Sublease if the failure is due in part or in full to reasons beyond Sublandlord's reasonable control, including without limitation, strikes or other labor difficulties, inability to obtain necessary governmental permits and approvals (including building permits or certificates of occupancy), war, act of terrorism, riot, civil insurrection, accidents, acts of God and governmental preemption in connection with a national emergency (collectively referred to as "Force Majeure").

13.6 Notices. All notices and other communications required under this Sublease shall be in writing and shall be given by (a) United States Postal Service, postage prepaid, certified, return receipt requested, (b) deposit with any nationally recognized overnight carrier that routinely issues receipts, or (c) by hand delivery (including by means of a professional messenger service), addressed to the party for whom it is intended at its address set forth in Section 1.1. Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party by similar notice given may change the address to which future notices or other communications shall be sent.

13.7 Attorneys' Fees and Costs of Enforcement. If either Party hereto commences an action to enforce any of the provisions of this Sublease, the prevailing party in such action shall be entitled to collect all of the costs of such action (including, without limitation, reasonable attorneys' fees and court costs) from the other party.

13.8 Interest. If any payment required by this Sublease is not made within five (5) calendar days after the payment is due, interest shall accrue on all amounts owing at the rate of 18% per annum or the maximum rate allowed by applicable law, whichever is less ("Interest"), from the date on which such payment was due until the date on which it is paid in full with accrued interest. Any interest paid in excess of legal limits shall be refunded to Subtenant by application of the amount of excess interest paid against any sums outstanding in any order that Sublandlord requires. If the amount of excess interest paid exceeds the sums outstanding, the portion exceeding those sums shall be refunded in cash to Subtenant by Sublandlord. To ascertain whether any interest payable exceeds the limits imposed, any nonprincipal payment (including late charges) shall be considered to the extent permitted by law to be an expense or a fee, premium, or penalty rather than interest.

13.9 Limitation on Sublandlord Liability Upon Transfer. In the event of any assignment or other transfer of Sublandlord's interest in and to the Subleased Premises, Sublandlord, subject to the provisions hereof (and in case of any subsequent transfers thereof, the then transferor), shall automatically be relieved and released, from and after the date of such assignment or transfer, of all liability with regard to the performance of any covenants or

obligations contained in this Sublease thereafter to be performed on the part of Sublandlord (or such transferor, as the case may be), but not from liability incurred by Sublandlord (or such transferor, as the case may be) (i) on account of covenants or obligations to be performed by Sublandlord (or such transferor, as the case may be) hereunder before the date of such assignment or transfer or (ii) arising from the gross-negligence or willful misconduct of Sublandlord before or after the date of such assignment or transfer; provided, however, that Sublandlord (or such subsequent transferor) also shall automatically be relieved and released from liability on account of covenants and obligations to be performed hereunder before the date of such assignment or transfer if and to the extent Sublandlord (or such subsequent transferor) has transferred to the transferee any funds in Sublandlord's possession (or in the possession of such subsequent transferor) in which Sublandlord (or such subsequent transferor) has an interest, in trust, for application to such liability, and such transferee has assumed in writing all such liability to Subtenant.

13.10 No Recourse Against Specified Persons. No shareholder, board member, officer, employee, limited partner or member of Subtenant or of any partner or member of Subtenant will be personally liable to Sublandlord or any successor in interest of Sublandlord for any Event of Default of Subtenant, and Sublandlord agrees that it will have no recourse with respect to any obligation of Subtenant under this Sublease, or for any amount which may become due to Sublandlord or any successor or for any obligation or claim based upon this Sublease, against any such Person.

13.11 No Sublandlord Liability. Except to the extent of the gross negligence or willful misconduct of Sublandlord, or its the members, officers, directors, commissioners, employees, agents and contractors of Sublandlord, and its respective heirs, legal representatives, successors and assigns, and subject to Subtenant's indemnification obligations, Sublandlord shall not be liable or responsible in any way for:

(a) Any loss or damage whatsoever to any property belonging to Subtenant or to its representatives or to any other person who may be in or upon the Subleased Premises; or

(b) Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Subleased Premises under any of the provisions of this Sublease or otherwise.

13.12 Time of the Essence. Time is of the essence of each and every provision of this Sublease.

13.13 No Waiver. The waiver by either party of any agreement, condition, or provision contained in this Sublease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Sublease.

13.14 Complete Agreement and Amendment. This Sublease sets forth the complete agreement between Sublandlord and Subtenant with respect to the subject matter hereof, and this Sublease may not be terminated, amended or modified in any respect except by agreement in writing executed by both Sublandlord and Subtenant.

13.15 Severability. If any provision of this Sublease proves to be illegal, invalid or unenforceable, the remainder of this Sublease will not be affected by such finding, and in lieu of each provision of this Sublease that is illegal, invalid or unenforceable, a provision will be added as a part of this Sublease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

13.16 Captions. The captions of the various Articles and Sections of this Sublease are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

13.17 Authority. Subtenant and the party executing this Sublease on behalf of Subtenant represent to Sublandlord that such party is authorized to do so by requisite action of the board of directors, or partners, as the case may be, and agree upon request to deliver to Sublandlord a resolution or similar document to that effect.

13.18 Brokers. Sublandlord and Subtenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Subleased Premises except the Brokers named in Section 1.1, if any. Each of them will indemnify the other against and hold the other harmless from any claims for fees or commissions from anyone with whom either of them has consulted or negotiated with regard to the Subleased Premises except the Brokers.

13.19 Governing Law. This Sublease will be governed by and construed pursuant to the laws of the State of California.

13.20 Binding Effect. The covenants, conditions and agreements contained in this Sublease will bind and inure to the benefit of Sublandlord and Subtenant and their respective heirs, distributees, executors, administrators, successors, transferees, and, except as otherwise provided in this Sublease, their assigns.

13.21 Recordation. This Sublease will not be recorded by either Party.

13.22 Counterparts. This Sublease Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by the other party. Counterparts may be delivered by email (as PDFs) or by facsimile transmission.

13.23 Quiet Enjoyment. Sublandlord covenants and agrees with Subtenant that upon Subtenant paying the Rent and Additional Rent due hereunder and observing and performing all the terms, covenants and conditions on Subtenant's part to be observed and performed hereunder, Subtenant may peaceably and quietly enjoy the Subleased Premises hereby demised, subject, however, to the terms and conditions of this Sublease, from and against all persons holding an interest in the Subleased Premises from and through Sublandlord.

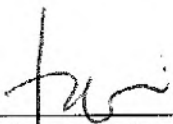
13.24 OFAC. Subtenant represents and warrants that neither Subtenant nor any of its affiliates, or their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action.

[Signature Page Follows]

Sublandlord and Subtenant have executed this Sublease as of the date first above written.

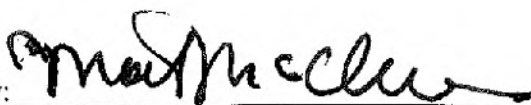
**SUBLANDLORD:**

**Oakland Bulk and Oversized Terminal, LLC,**  
a California limited liability company

By:   
Phil Tagami, Manager

**SUBTENANT:**

**Oakland Global Rail Enterprise, LLC,**  
a California limited liability company

By:   
Mark McClure, Manager

**EXHIBIT A**  
**to**  
**Sublease**  
**(WGW Rail)**

**Subleased Premises**

[See Attached]

*Plat RR-1 // Rail Road at West Gateway*

**Land Description** of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being a portions of Lots 9 and 10 as shown upon Parcel Map 10095 filed August 13, 2013, in Book 324 of Parcel Maps at Pages 6 thru 15 Official Records of said County, and being more particularly described as follows:

Beginning at the northeast corner of Lot 9; Thence along the east line of Lot 9, South 08° 55' 17" East – 87.47 feet; Thence across Lot 9, South 81° 33' 14" West – 446.81 feet to a point on the south line of Lot 9; Thence along said south line for the following three (3) courses: (1) North 48° 48' 07" West – 19.77 feet, and (2) South 81° 26' 43" West – 354.66 feet, and (3) South 80° 58' 50" West – 241.57 feet; Thence crossing through lots 9 and 10 for the following three (3) courses: (1) North 08° 24' 05" West – 1.43 feet, (2) South 87° 20' 57" West – 15.79 feet, and (3) South 81° 33' 14" West – 2219.71 feet to a point on the curving north line of Lot 10, being a curve to the left from which the center bears North 40° 53' 17" West; Thence along the north lines of Lots 9 and 10 for the following five (5) courses: (1) in a northeasterly direction 44.31 feet along the arc of said curve to the left, having a radius of 84.00 feet and through the central angle of 30° 13' 14" to the point of reverse curvature, (2) in an easterly direction 109.99 feet along the arc of said reverse curve to the right, having a radius of 91.00 feet and through the central angle of 69° 15' 01", (3) North 88° 08' 30" East – 29.27 feet to the beginning of a curve to the left, (4) in an easterly direction 38.09 feet along the arc of said curve to the left having a radius of 334.00 feet and through the central angle of 06° 32' 04", and (5) North 81° 36' 26" East – 3102.60 feet to the Point of Beginning.

Containing 248,604 square feet (5.7 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-1 Rail Road at West Gateway), attached and hereby made part of the land description.

*Plat RR-1 // Rail Road at West Gateway*

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

**End of Description**

This description and its accompanying plat were prepared by me, or under my direction, in February 2016.



Scott A. Shortlidge, LS 6441



2-8-2016  
Date

# NOTE

BEARINGS AND DISTANCES ARE BASED ON RECORD OF SURVEY NO. 990. ALL DISTANCES SHOWN OR DERIVED FROM THIS DRAWING ARE GRID. TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000705.

## LEGEND

P.O.B.

POINT OF BEGINNING



LEASE LIMITS

PARCEL 9  
STATE OF CALIFORNIA  
BK 4188 PG 156

BURMA ROAD

PARCEL 2

PARCEL F-1  
PORT OF OAKLAND  
2006-301849

CITY OF OAKLAND  
STATUTES 1911, CHAPTER 657

LEASE AREA  
248,604± SQ. FT.  
(5.7± AC)  
(MEASURED IN  
GROUND DISTANCES)

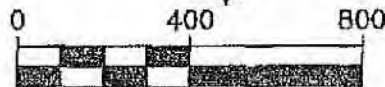
PARCEL MAP 10095  
324 PM 5

USA  
TRACT 14  
PARCEL 1  
REEL 32,  
IMAGE 660

PARCEL F-1  
PORT OF OAKLAND  
2006-301849

| Curve Table |         |           |         |
|-------------|---------|-----------|---------|
| Curve       | Radius  | Delta     | Length  |
| C1          | 84.00'  | 30°13'15" | 44.31'  |
| C2          | 91.00'  | 69°15'01" | 109.99' |
| C3          | 334.00' | 6°32'04"  | 38.09'  |

| Line Table |             |          |
|------------|-------------|----------|
| Line       | Bearing     | Distance |
| L1         | S08°55'17"E | 87.47'   |
| L2         | N48°48'07"W | 19.77'   |
| L3         | S80°58'50"W | 241.57'  |
| L4         | N08°24'05"W | 1.43'    |
| L5         | S87°20'57"W | 15.79'   |
| L6         | N88°08'30"E | 29.27'   |



( IN FEET )

1 inch = 400 ft.



2-8-16

G:\Job801\111067\Hopping\Plots\PLAT RR-1.dwg

PLAT RR-1  
RAIL. ROW AT WEST GATEWAY

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

**RJA**  
**RUGGERI-JENSEN-AZAR**  
ENGINEERS • PLANNERS • SURVEYORS  
1690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
PHONE: (925) 227-9100 FAX: (925) 227-0300

SCALE:  
1"=400'

DATE:  
2-8-2016

JOB NO.:  
111069

*Plat RR-2 // Rail ROW at MH-1*

**Land Description** of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being a portion of Lot 7 as shown upon Parcel Map 10095 filed August 13, 2013, in Book 324 of Parcel Maps at Pages 6 thru 15 Official Records of said County, and being more particularly described as follows:

**Beginning** at the northwest corner of Lot 7; Thence along the north line of Lot 7 for the following four (4) courses: (1) North  $81^{\circ} 36' 26''$  East – 749.36 feet to the beginning of a curve to the left, (2) in an easterly direction 76.36 feet along the arc of said curve to the left, having a radius of 334.00 feet and through the central angle of  $13^{\circ} 05' 56''$ , (3) North  $68^{\circ} 30' 30''$  East – 205.60 feet to the beginning of a curve to the right, and (4) in an easterly direction 172.87 feet along the arc of said curve to the right, having a radius of 262.00 feet and through the central angle of  $37^{\circ} 48' 16''$ ; Thence crossing through Lot 7 for the following four (4) courses: (1) South  $68^{\circ} 34' 54''$  West – 89.58 feet, (2) South  $62^{\circ} 09' 09''$  West – 212.71 feet for the beginning of a curve to the right from which the center bears North  $27^{\circ} 39' 03''$  West, (3) in a westerly direction 231.70 feet along the arc of said curve to the right having a radius of 615.27 feet and through the central angle of  $21^{\circ} 34' 36''$ , and (4) South  $81^{\circ} 33' 14''$  West – 677.72 feet to a point on the west line of Lot 7; Thence along said west line, North  $08^{\circ} 55' 17''$  West – 87.47 feet to the **Point of Beginning**.

**Containing** 93,881 square feet (2.2 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-2 Rail ROW at MH-1), attached and hereby made part of the land description.

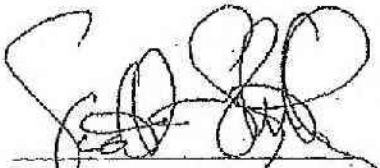
Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of

Plat RR-2 // Rail ROW at MH-1

Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

**End of Description**

This description and its accompanying plat were prepared by me, or under my direction, in February 2016.

  
Scott A. Shortlidge LS 6441



2-8-2016  
Date



*Plat RR-3.1 // Rail ROW at Sliver*

**Land Description** of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being a portion of Lot 5 as shown upon Parcel Map 10095 filed August 13, 2013, in Book 324 of Parcel Maps at Pages 6 thru 15 Official Records of said County, and being more particularly described as follows:

**Beginning** at a northern corner of said Lot 5 being at the westerly terminus of the course labeled "North 63° 07' 59" West – 314.87 feet"; Thence with the north line of Lot 5, South 63° 07' 59" East – 126.51 feet; Thence across Lot 5 for the following two (2) courses: (1) South 75° 44' 10" West – 23.70 feet for the beginning of a curve to the left, and (2) in a southwesterly direction 78.27 feet along the arc of said curve to the left, having a radius of 439.28 feet and through a central angle of 10° 12' 32" to a point on the southerly curving line of Lot 5, being a curve to the left from which point the center bears South 40° 13' 44" West; Thence with said south line in a northwesterly direction 125.27 feet along the arc of said curve to the left, having a radius of 347.50 feet and through a central angle of 20° 39' 17"; Thence across Lot 5, North 68° 30' 30" East – 84.69 feet to a point on the curving north line of Lot 5, being a curve to the right from which point the center bears South 17° 34' 01" West; Thence with said north line in a northeasterly direction 13.72 feet along the arc of said curve to the right, having a radius of 1475.00 feet and through a central angle of 00° 32' 23" to **Point of Beginning**.

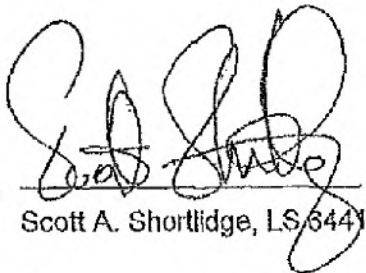
**Containing** 8,585 square feet (0.2 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-3.1 Rail ROW at Sliver), attached and hereby made part of the land description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

Plat RR-3.1 // Rail ROW at Sliver

**End of Description**

This description and its accompanying plat were prepared by me, or under my direction,  
In February 2016.

  
Scott A. Shortlidge, LS 6441



2-8-2016  
Date

# LEGEND

P.O.B. POINT OF BEGINNING



LEASE LIMITS



( IN FEET )

1 inch = 100 ft.

STATE ROUTE 80

| Curve Table |          |           |        |
|-------------|----------|-----------|--------|
| Curve       | Radius   | Delta     | Length |
| C1          | 439.28'  | 10°12'32" | 78.27' |
| C2          | 1475.00' | 00°32'23" | 13.72' |

| Line Table |             |          |
|------------|-------------|----------|
| Line       | Bearing     | Distance |
| L1         | S75°44'10"W | 23.70'   |

WEST GRAND AVENUE  
STATE OF CALIFORNIA  
2002-072863

LEASE AREA  
8,585± SQ. FT.  
(0.2± AC)  
(MEASURED IN  
GROUND DISTANCES)

P.O.B.

PARCEL 8  
STATE OF CALIFORNIA  
2010-076697

N17°34'01"E(R) C2  
R=1457.00'

S63°07'59"E 314.87'  
188.36'

LOT 5  
10.69± AC.

PARCEL B

LOT 7  
44.65± AC.

PARCEL MAP 10095  
324 PM 6

BURMA ROAD



## NOTE

BEARINGS AND DISTANCES ARE BASED ON  
RECORD OF SURVEY NO. 990. ALL  
DISTANCES SHOWN OR DERIVED FROM THIS  
DRAWING ARE GRID. TO OBTAIN GROUND  
LEVEL DISTANCES MULTIPLY BY 1.0000705.

PLAT RR-3.1  
RAIL ROW AT SLIVER

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA



RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS  
4650 CHADDT DRIVE, SUITE 200 PLEASANTON, CA 94589  
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:  
1"=100'

DATE:  
2-B-2016

JOB NO.:  
111069

*Plat RR-4.1 // Rail ROW under Freeway*

**Land Description** of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being a portion of that certain parcel described as Parcel 56444 (West Grand Avenue) in a Quitclaim Deed recorded on February 13, 2002 under document no. 2002-072863 in the Official Records of said County, and being more particularly described as follows:

**Beginning** at the most westerly corner of Lot 3 as shown upon Parcel Map 10095 filed on August 13, 2013, in Book 324 of Parcel Maps at Pages 6 thru 15 Official Records of said County, same corner being on the north line of said Parcel 56444; Thence along said north line for the following two courses: (1) South 57° 29' 34" East – 72.43 feet, and (2) South 59° 14' 43" East – 64.95 feet; Thence crossing through Parcel 56444 for the following four (4) courses: (1) South 74° 01' 57" West – 65.38 feet for the beginning of a curve to the right, (2) In a southwesterly direction 83.51 feet along the arc of said curve to the right, having a radius of 593.69 feet and through a central angle of 08° 03' 34", (3) South 82° 05' 31" West – 270.27 feet, and (4) South 68° 30' 30" West – 25.57 feet to a point on the south line of Parcel 56444; Thence along said south line for the following two (2) courses: (1) North 63° 07' 59" West – 126.51 feet to the beginning of a curve to the left, from which point the center bears South 18° 06' 24" West, and (2) in a northwesterly direction 13.72 feet along the arc of said curve to the left, having a radius of 1457.00 feet and through a central angle of 00° 32' 23"; Thence crossing through Parcel 56444 for the following three (3) courses: (1) North 68° 30' 30" East – 25.57 feet for the beginning of a curve to the right, (2) In an northeasterly direction 126.66 feet along the arc of said curve to the right, having a radius of 593.69 feet and through a central angle of 12° 13' 24", and (3) North 80° 43' 54" East – 331.10 feet to a point on the north line of Parcel 56444; Thence along said the said north line, South 57° 29' 34" East – 5.94 feet to the **Point of Beginning**.

*Plat RR-4.1 // Rail ROW under Freeway*

Containing 47,120 square feet (1.0 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-4.1 Rail ROW under Freeway), attached and hereby made part of the land description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

**End of Description**

This description and its accompanying plat were prepared by me, or under my direction, in February 2016.

  
Scott A. Shortlidge, LS 6441

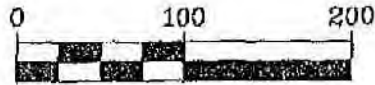


2-8-2016  
Date

# LEGEND

P.O.B. POINT OF BEGINNING

LEASE LIMITS



( IN FEET )  
1 inch = 100 ft.

| Curve Table |          |           |        |
|-------------|----------|-----------|--------|
| Curve       | Radius   | Delta     | Length |
| C1          | 593.69'  | 08°03'34" | 83.51' |
| C2          | 1457.00' | 00°32'23" | 13.72' |

# NOTE

BEARINGS AND DISTANCES ARE BASED ON  
RECORD OF SURVEY NO. 990. ALL  
DISTANCES SHOWN OR DERIVED FROM THIS  
DRAWING ARE GRID. TO OBTAIN GROUND  
LEVEL DISTANCES MULTIPLY BY 1.0000705.

EAST BAY MUNICIPAL  
UTILITY DISTRICT  
2007-243205

LOT 3  
4.51± AC.

PARCEL MAP 10095  
324 PM 6

STATE ROUTE 80

P.O.B.

5.94'

66.49'

S59°14'43"E 262.30'  
197.35'

N74°01'57"E  
65.38'

WEST GRAND AVENUE  
STATE OF CALIFORNIA  
2002-072863

EASEMENT AREA  
47,120± SQ. FT.  
(1.0± AC)  
(MEASURED IN  
GROUND DISTANCES)

N68°30'30"E  
25.57'

R=593.69'  
Δ=124°32'24"  
L=106.66'

N80°43'54"E 331.10'

N68°30'30"E  
25.57'

N82°05'31"E 270.27'

C2 N63°07'59"W 126.51'  
N18°06'24"E(R)

N59°26'20"W 388.08'

LOT 5  
10.69± AC.

PARCEL MAP 10095  
324 PM 6

BURMA ROAD  
PARCEL B



PLAT RR-4.1  
RAIL ROW UNDER FREEWAY

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

**RJA**  
**RUGGERI-JENSEN-AZAR**  
ENGINEERS • PLANNERS • SURVEYORS  
4690 CHADOT DRIVE, SUITE 200 - PLEASANTON, CA 94588  
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:  
1"=100'

DATE:  
2-8-2018

JOB NO.:  
111069

*Plat RR-5.1 Rail ROW west of Gateway*

**Land Description** of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being a portion of Lot 3 as shown upon Parcel Map 10095 filed on August 13, 2013, in Book 324 of Parcel Maps at Pages 6 thru 15 Official Records of said County, and being more particularly described as follows:

**Beginning** at the northwest corner of said Lot 3, same corner being at the beginning of a curve to the right from which the center bears South  $08^{\circ} 32' 47''$  East; Thence along the north of Lot 3 for the following four (4) courses; (1) in a northeasterly direction 177.04 feet along the arc of said curve to the right, having a radius of 1252.80 feet and through a central angle of  $08^{\circ} 05' 48''$  to the point of compound curvature, (2) in an northeasterly direction 121.05 feet along the arc of said curve to the right, having a radius of 3336.10 feet and through a central angle of  $02^{\circ} 04' 44''$ , (3) North  $82^{\circ} 00' 02''$  West – 308.54 feet for the beginning of a curve to the right, and (4) in a northeasterly direction 199.96 feet along the arc of said curve to the right, having a radius of 3316.09 feet and through a central angle of  $03^{\circ} 27' 18''$  to the northeast corner Lot 3, same corner being at the beginning of a curve to the left from which the center bears South  $70^{\circ} 30' 29''$  East; Thence along the east line of Lot 3 for the following six (6) courses: (1) in a southerly direction 1.80 feet along the arc of said curve to the left, having a radius of 15.00 feet and through a central angle of  $06^{\circ} 53' 38''$ , (2) South  $12^{\circ} 35' 53''$  West – 9.85 feet to the beginning of a curve to the left, (3) in a southerly direction 9.01 feet along the arc of said curve to the left, having a radius of 15.00 feet and through the central angle of  $34^{\circ} 23' 54''$  to a point of reverse curvature, (4) in a southerly direction 3.00 feet along the arc of said curve to the right, having a radius of 5.00 feet and through the central angle of  $34^{\circ} 23' 54''$ , (5) South  $12^{\circ} 35' 53''$  West – 27.19 feet to the beginning of a curve to the left, and (6) in a southerly direction 14.15 feet along the arc of a curve to the left, having a radius of 346.00 feet and through a central angle of  $02^{\circ} 20' 38''$  for the beginning

*Plat RR-5.1 Rail ROW west of Galaway*

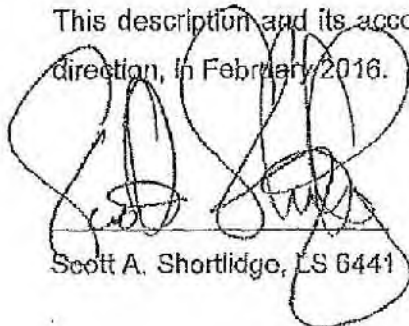
of a curve to the left, from which point the center bears South 11° 12' 04" West; Thence crossing through Lot 3 for the following four (4) courses: (1) in a northwesterly direction 159.53 feet along the arc of said curve to the left, having a radius of 2844.93 feet and through a central angle of 03° 12' 46", (2) North 82° 00' 42" West – 283.53 feet for the beginning of a curve to the left, (3) in a southwesterly direction 231.50 feet along the arc of said curve to the left, having a radius of 553.69 feet and through a central angle of 23° 57' 21", and (4) South 74° 01' 57" West – 13.23 feet to a point on the south line of Lot 3; Thence along said south line for the following two (2) courses: (1) North 59° 14' 43" West – 64.95 feet, and (2) North 57° 29' 34" West – 66.49 feet to the **Point of Beginning**.

**Containing** 44,407 square feet (1.0 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-5.1 Rail ROW west of Wake), attached and hereby made part of the land description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

**End of Description**

This description and its accompanying plat were prepared by me, or under my direction, in February 2016.

  
Scott A. Shortlidge, LS 6441



2-8-2016  
Date

# NOTE

BEARINGS AND DISTANCES ARE BASED ON  
RECORD OF SURVEY NO. 990. ALL  
DISTANCES SHOWN OR DERIVED FROM THIS  
DRAWING ARE GRID. TO OBTAIN GROUND  
LEVEL DISTANCES MULTIPLY BY 1.0000705.

# LEGEND

P.O.B. POINT OF BEGINNING

LEASE LIMITS

| Line Table |             |          |
|------------|-------------|----------|
| Line       | Bearing     | Distance |
| L1         | S12°35'53"W | 9.85'    |
| L2         | S12°35'53"W | 27.19'   |

| Curve Table |         |           |        |
|-------------|---------|-----------|--------|
| Curve       | Radius  | Delta     | Length |
| C1          | 15.00'  | 06°53'38" | 1.80'  |
| C2          | 15.00'  | 34°23'54" | 9.01'  |
| C3          | 5.00'   | 34°23'54" | 3.00'  |
| C4          | 346.00' | 2°20'38"  | 14.15' |

EAST BAY MUNICIPAL  
UTILITY DISTRICT  
2007-243205

PARCEL E  
0.69± AC.

LOT 3  
4.51± AC.

PARCEL MAP 10095  
324 PM 6

LEASE AREA  
44,407± SQ. FT.  
(1.0± AC)  
(MEASURED IN  
GROUND DISTANCES)

N08°32'47"W(R)

P.O.B.



( IN FEET )

1 inch = 100 ft.

OAKLAND CHARTER  
LINE OF 1862

STATE OF CALIFORNIA  
2002-072863



PLAT RR-5.1  
RAIL ROW WEST OF WAKE

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

**RJA**  
**RUGGERI-JENSEN-AZAR**  
ENGINEERS • PLANNERS • SURVEYORS  
1690 CHARLOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:  
1"=100'

DATE:  
2-8-2016

JOB NO.:  
111069

*Plat RR-6.1 // Rail ROW east of Gateway*

**Land Description** of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being portions of Lots 1 and 2 as shown upon Parcel Map 10095 filed on August 13, 2013, in Book 324 of Parcel Maps at Pages 6 thru 15 Official Records of said County, and being more particularly described as follows:

**Beginning** at the northwest corner of said Lot 2, same corner being at the beginning of a curve to the right from which the center bears South  $11^{\circ} 54' 36''$  West; Thence along the north lines of Lots 1 and 2 for the following six (6) courses: (1) in a northeasterly direction 392.74 feet along the arc of said curve to the right, having a radius of 3316.09 feet and through a central angle of  $06^{\circ} 47' 09''$ , (2) North  $71^{\circ} 17' 43''$  West – 326.54 feet, (3) North  $70^{\circ} 28' 52''$  West – 279.52 feet, (4) South  $13^{\circ} 11' 35''$  East – 15.15, (5) South  $79^{\circ} 58' 02''$  East – 2.12 feet to the beginning of a curve to the right, from which the center bears South  $13^{\circ} 11' 35''$  East, and (6) in a southeasterly direction 138.66 feet along the arc of said curve to the right, having a radius of 599.96 feet and through a central angle of  $13^{\circ} 14' 31''$ ; Thence crossing through Lots 1 & 2 for the following eight (8) courses: (1) North  $70^{\circ} 57' 49''$  West – 127.43 feet for the beginning of a curve to the right, (2) in a northwesterly direction 38.17 feet along the arc of said curve to the right, having a radius of 638.80 feet and through a central angle of  $03^{\circ} 25' 24''$ ; (3) North  $67^{\circ} 32' 25''$  West – 205.60 feet for the beginning of a curve to the left, (4) in a northwesterly direction 61.30 feet along the arc of said curve to the left, having a radius of 935.37 feet and through a central angle of  $03^{\circ} 45' 18''$ , (5) North  $71^{\circ} 17' 43''$  West – 258.36 feet for the beginning of a curve to the left, (6) in a northwesterly direction 68.53 feet along the arc of said curve to the left, having a radius of 1126.28 feet and through a central angle of  $03^{\circ} 29' 10''$ , (7) North  $74^{\circ} 46' 53''$  West – 261.90 feet for the beginning of a curve to the left, and (8) in a northwesterly direction 103.97 feet along the arc of said curve to the left, having a radius of 2844.93 feet and through a central angle of  $02^{\circ} 05' 38''$  to a

*Plat RR-6.1 // Rail ROW east of Gateway*

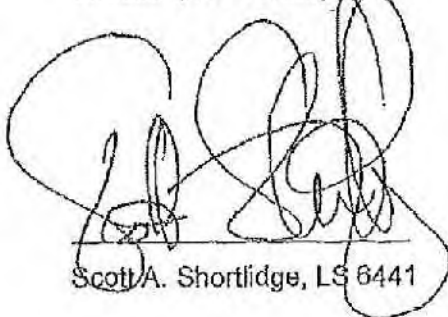
point on the west line of Lot 2; Thence along said west line for the following four (4) courses: (1) North 10° 48' 11" East – 5.58 feet to the beginning of a curve to the left, (2) in a northerly direction 8.39 feet along the arc of said curve to the left, having a radius of 17.00 feet and through a central angle of 28° 15' 51" to the point of reverse curvature, (3) in a northerly direction 5.25 feet along the arc of said curve to the right, having a radius of 10.00 feet and through a central angle of 30° 03' 33", and (4) North 12° 35' 53" East – 40.10 feet to **Point of Beginning**.

Containing 63,071 square feet (1.4 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-6.1 Rail ROW east of Wake), attached and hereby made part of the land description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

**End of Description**

This description and its accompanying plat were prepared by me, or under my direction, in February 2016.

  
Scott A. Shortlidge, LS 6441



2-6-2016  
Date

# LEGEND

P.O.B. POINT OF BEGINNING

LEASE LIMITS



EAST BAY MUNICIPAL  
UTILITY DISTRICT  
2007-248205



( IN FEET )  
1 inch = 120 ft.

N36°18'08"E(R)

N13°11'35"W 15.15

PARCEL 1-2  
PORT OF OAKLAND  
2005-301854

N70°57'49"W 127.43  
N49°32'39"E(R)

LOT 1  
8.31± AC.

LEASE AREA  
63,071± SQ. FT.  
(1.4± AC)  
(MEASURED IN  
GROUND DISTANCES)

| Line Table |             |          |
|------------|-------------|----------|
| Line       | Bearing     | Distance |
| L1         | S12°35'53"W | 40.10'   |
| L2         | N79°58'02"W | 2.12'    |

PARCEL E  
0.69± AC.

LOT 2  
13.54± AC.

PARCEL MAP 10095  
324 PM 6

| Curve Table |          |           |         |
|-------------|----------|-----------|---------|
| Curve       | Radius   | Delta     | Length  |
| C1          | 599.96'  | 13°14'31" | 138.66' |
| C2          | 638.80'  | 03°25'24" | 38.17'  |
| C3          | 935.37'  | 03°45'18" | 61.30'  |
| C4          | 1126.28' | 03°29'10" | 68.53'  |
| C5          | 2844.93' | 02°05'38" | 103.97' |
| C6          | 17.00'   | 28°15'51" | 8.39'   |
| C7          | 10.00'   | 30°03'33" | 5.25'   |

SEE DETAIL "A"

WAKE AVENUE

DETAIL "A"  
NOT TO SCALE

## NOTE

BEARINGS AND DISTANCES ARE BASED ON  
RECORD OF SURVEY NO. 990. ALL  
DISTANCES SHOWN OR DERIVED FROM THIS  
DRAWING ARE GRID. TO OBTAIN GROUND  
LEVEL DISTANCES MULTIPLY BY 1.0000705.

PLAT RR-6.1  
RAIL ROW EAST OF WAKE

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA



RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS  
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:  
1"=100'

DATE:  
2-8-2016

JOB NO.:  
111069

**EXHIBIT 8.2(c)**  
**to**  
**Sublease**  
**(WGW Rail)**

**Third Party Agreements**

The following agreements, as the same may be amended in accordance therewith and in accordance with the provisions of Section 5.2.3 of the Master Lease:

1. Amended and Restated Cost Sharing Agreement between City and Port, dated June 19, 2012.
2. Amended and Restated Trade Corridors Improvement Fund Project Baseline Agreement between City, Port and Caltrans, dated August 22, 2012, and related Funding Agreement.
3. Cooperation Agreement Among the City of Oakland, Alameda County Construction and Building Trades Council, Alameda County Central Labor Council, and Specified Oakland Community-Based Organizations Regarding the Oakland Army Base Project, dated December 20, 2012.
4. Project Labor Agreement for the Oakland Army Base – Public Improvements by and among the City, Building and Construction Trades Council of Alameda County, AFL-CIO and the applicable local unions, dated September 12, 2013.
5. EBMUD MOA.

**ATTACHMENT 2**

**Documents Previously Request by City**

[See Attached]

# OGRE Organizational Structure

## Industrial Railways Co. (IRC)

The oldest continually-operating railroad construction contractor in existence throughout Northern California and Nevada.



## West Oakland Pacific Railroad (WOPR)

Runs two locomotives and provides five day per week service on the former Oakland Terminal Railway tracks and on new Port of Oakland tracks.



## California Capital & Investment Group, Inc. (CCIG)

A full service commercial real estate company specializing in Commercial Brokerage, Management, Investments and Advisory.



## Oakland Global Rail Enterprise (OGRE)



**Mark McClure,**  
OGRE President

Mark McClure is a California licensed general contractor and partner at CCIG, specializing in land use, entitlements, and permitting for Bay Area residential and commercial development.



**Phil Tagami,**  
President and  
CEO of CCIG

For the past 25 years, Phil Tagami has served as a developer and a development consultant on numerous projects representing hundreds of millions of dollars of construction.



**Chris Stotka,**  
OGRE Director of  
Rail Operations

Chris Stotka is the owner of WOPR and managing partner of IRC. He has extensive experience in all phases of railroad track design, construction, maintenance, removal, inspection and transloading.



**Jake Studer,**  
OGRE General  
Manager

Prior to joining OGRE, Jake Studer worked for the San Francisco Bay Railroad and the Northwest Pacific Railroad managing all aspects of the rail operation.

THE MEMBERSHIP INTERESTS REFERENCED HEREIN HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. SUCH MEMBERSHIP INTERESTS CONSTITUTE SECURITIES AND MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR AN EXEMPTION FROM SUCH REQUIREMENTS IS AVAILABLE. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS, WHICH ARE SET FORTH HEREIN.

**OPERATING AGREEMENT  
OF  
OAKLAND GLOBAL RAIL ENTERPRISE, LLC  
A CALIFORNIA LIMITED LIABILITY COMPANY**



**OPERATING AGREEMENT  
OF  
OAKLAND GLOBAL RAIL ENTERPRISE, LLC  
A California Limited Liability Company**

**THIS OPERATING AGREEMENT OF OAKLAND GLOBAL RAIL ENTERPRISE, LLC** is made and entered into by and among the California Capital & Investment Group, Inc., a California corporation ("CCIG"), and West Oakland Pacific Railroad a California limited liability company ("WOPR"), as of July \_\_, 2013 (the "Effective Date").

**WHEREAS**, the Members hereto desire to establish this limited liability company (the "Company") pursuant to the laws of the State of California; and

**WHEREAS**, the Members hereto desire to memorialize herein their rights and obligations with respect to such limited liability company.

**NOW, THEREFORE**, in recognition of the foregoing and in consideration for the mutual covenants provided for herein, it is hereby agreed as follows:

**ARTICLE 1  
ORGANIZATIONAL MATTERS**

1.1 **Definitions.** Unless otherwise expressly defined in the text of this Agreement, each initially capitalized term used in this Agreement shall have the meaning ascribed thereto pursuant to the attached Exhibit A.

1.2 **Name.** The name of the Company is "Oakland Global Rail Enterprise, LLC." The business of the Company shall be conducted under such name, or such other name or names as may from time to time be designated by the Members.

1.3 **Purpose and Powers.**

1.3.1. The business and purpose of the Company is to (a) develop and operate a Class III railroad serving portions of the former Oakland Army Base and the Port of Oakland and (b) do any and all things that may be necessary, incidental or convenient to carry on the Company's business and purpose specified herein.

1.3.2. The Company shall have all of the powers permitted to a limited liability company under the Act, including without limitation, the power to engage in any and all lawful business activities related or incidental to its primary purposes.

1.4 **Term.** The term of the Company commenced when the Company was formed pursuant to the Articles of Organization, dated as April 22, 2013 and filed with the Secretary of

State of the State of California on April 23, 2013 and shall continue thereafter until terminated as provided in this Agreement or by operation of law.

1.5 Fictitious Business Name Certificates. The Accounting Member shall execute and cause to be recorded fictitious business name, trade name or other similar certificates as, when and where required pursuant to applicable law.

1.6 Principal Executive Office. The principal executive office of the Company shall be located at c/o California Capital & Investments, Inc., 300 Frank Ogawa Plaza, Suite 340, Oakland, CA 94612, or such other location hereafter determined by the Managing Members.

1.7 Title to Assets. All assets of the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member shall have an ownership interest in such assets solely by reason of being a Member. Title to all assets of the Company shall be held in the name of the Company or its designated nominee, and each of the Members shall execute, acknowledge, record and file any and all instruments as may be necessary or appropriate to evidence the ownership of such assets by the Company.

1.8 Non-foreign Status. The Accounting Member shall have the right from time to time in its discretion to require that each Member and each Assignee provide to the Company reasonably satisfactory evidence as to whether such Person is a foreign Person, as such term is defined in Regulations Section 1.897-1(k) and whether such Person is subject to withholding for California state income tax purposes.

1.9 Members. The name, address and initial Percentage Interest of each of the Members are set forth on Schedule 1.9 attached. The Percentage Interests are subject to adjustment in accordance with this Agreement.

1.10 Independent Activities. Nothing in this Agreement shall preclude a Member (or any shareholder, partner, member, director, officer, employee or Affiliate of any Member), solely by virtue of being a Member, either directly or indirectly, from engaging in or possessing separate and apart from the Company, an interest in any other business and assets of any kind or description. Except as expressly set forth in Section 1.10.2 below, (a) neither the Company nor any other Member shall, by reason of this Agreement, hold any interest or right to any such other business or assets, or any proceeds or profits derived therefrom without regard to whether any such business is competitive with or similar in nature to the business of the Company, (b) each Member specifically acknowledges that no Member has any duty or obligation to submit any investment opportunity or prospective economic advantage to the Company or any other Member, by reason of this Agreement and (c) each Member has the right to hold any investment opportunity or prospective economic advantage for such Member's own account, or to recommend such opportunity or advantage to Persons other than the Company.

1.10.1 Other Projects. Without limiting the provisions of Section 1.10, (a) WOPR acknowledges that an affiliate of CCIG has entered into a lease development and disposition agreement for the City-owned portion of the former Oakland Army Base for the

purpose of ground leasing such property from the City and (b) CCIG acknowledges that an affiliate of WOPR is currently engaged in a trans-loading operation within the Port area (the "Other Projects"). Neither the Members nor the Company shall have a right to participate in the Other Projects as a result of this Agreement or their status as a Member of the Company.

1.10.2 Option to Participate. Notwithstanding the provisions of this Section 1.10 to the contrary, the Members hereby agree that, excepting the Other Project, the Company shall have a right of first refusal to participate in new business opportunity that any Member engages in that is both (a) related to rail operations and (b) located within one (1) mile of the boundaries of the former Oakland Army Base project area. In the event that the Company exercises its option, the Members would be required to fund their full pro rata share of any capital associated with such opportunity.

1.11 No Liability. No Member (including in any capacity as the Managing Member), no person who is an officer or director of a Member (including in any capacity as the Managing Member), and no person who serves as an officer of the Company, shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member (including in any capacity as a Managing Member or as the Administrative member or Accounting Member), a member or an officer or director of a Member (including in any capacity as the Managing Member), or an officer of the Company.

## ARTICLE 2 CAPITAL ACCOUNTS

2.1 Compliance With Regulations. A separate Capital Account shall be established and maintained for each Member in accordance with Regulations Section 1.704-1(b)(2)(iv) and this Article 2.

2.2 Capital Account Adjustments. In compliance with the provisions of Section 2.1 above, each Member's Capital Account shall be determined and adjusted as provided in this Section, and in Sections 2.3 and 2.4 below. The Capital Account of each Member shall be credited with (a) any Capital Contribution made by such Member; (b) such Member's distributable share of income; and (c) any other increases in the Capital Account required by Regulations Section 1.704-1(b)(2)(iv). The Capital Account of each Member shall be debited with (w) distributions of cash from the Company to such Member; (x) the fair market value of property distributed to such Member, net of any liabilities to which such property is subject or which are assumed by such Member; (y) such Member's distributive share of loss; and (z) any other decreases required by Regulations Section 1.704-1(b)(2)(iv).

2.3 Contributed Property. In the event that property other than cash is contributed by a Member to the Company, the adjustments required by Regulations Section 1.704-1(b)(2)(iv)(g) and 1.704-1(b)(4)(i) shall be made to such Member's Capital Account.

2.4 Distributed Property. In the event that property is distributed or deemed distributed by the Company to a Member, the Capital Accounts of the Members shall be adjusted as provided in Regulations Section 1.704-1(b)(2)(iv)(e) to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property (that has not already been reflected in the Members' Capital Accounts) would be allocated if there were a taxable disposition of such property for its fair market value on the date of such distribution.

2.5 Transferred Interest. Any Member, including any Substitute Member, who shall receive an interest in the Company from another Member or whose interest in the Company shall be increased by means of a transfer to it of all or any part of the interest of another Member, shall have a Capital Account with respect to such interest initially equal to the Capital Account attributable to such interest determined in accordance with Regulations Section 1.704-1(b)(2).

2.6 Determination. In the event that it is necessary to determine the Capital Account of any Member for any purpose, the Capital Account of such Member shall be determined after giving effect to all allocations of items of income, gain, loss, deduction and credit realized by the Company and all contributions and distributions of cash and property occurring prior to the date such determination is made.

### **ARTICLE 3**

#### **CAPITAL CONTRIBUTIONS AND PROJECT LOAN**

3.1 Initial Capital Contributions. Each Member hereby agrees to make the following Capital Contributions to the Company ("Initial Capital Contributions") as set forth in Sections 3.1.1 and 3.1.2 below:

3.1.1 CCIG. CCIG shall contribute the following to the Company within ten (10) business days after the Effective Date:

(a) The work product summarized in Schedule 3.1.1(a), attached hereto (the "Prior Work Product"); and

(b) CCIG's rights and obligations with respect to the contractual rights listed in Schedule 3.1.1(b), attached hereto (the "CCIG Rights").

In return for the contribution of the Prior Work Product and CCIG Rights required under this Section 3.1.1, CCIG's Capital Account shall be credited with [REDACTED] for costs incurred through December 31, 2012, plus an amount equal to the costs related to the Company activities incurred in the calendar year 2013 (CCIG shall provide supporting documentation for such costs for such amount within sixty (60) days after the Effective Date).

3.1.2 WOPR. WOPR shall contribute the following to the Company within ten (10) business days after the Effective Date:

(a) WOPR's rights and obligations with respect to the contractual rights listed in Schedule 3.1.2(a), attached hereto (the "WOPR Rights"); and

(b) the equipment listed in Schedule 3.1.2(b).

In return for such contribution WOPR's Capital Account shall be credited with an amount anticipated not to exceed [REDACTED] supporting documentation to be provided within 30 days of execution of this agreement.

[REDACTED]

3.2 Additional Capital Contributions. If at any time or from time to time after all of the Initial Capital Contributions have been contributed, the Managing Members determine that the Initial Capital Contributions together with Net Capital Transaction Proceeds (to the extent then disbursed) are not sufficient to pay Company costs and expenses arising from matters other than those triggering Overrun Capital Contributions (defined below), the Managing Members may request that the Members make the following additional Capital Contributions in amounts necessary for the Company to pay such Company costs and expenses ("Additional Capital Contributions"):

3.2.1 First Tier Additional Contributions. With respect to the first [REDACTED] in Additional Capital Contributions (in the aggregate), WOPR shall have the right, but not the obligation to contribute its Percentage Share of each Capital Call. WOPR shall have until the date that is five (5) business days after receipt of a capital call to provide the Managing Members with written notice of WOPR's election whether or not to participate in the Capital Call. If WOPR fails to provide such notice in a timely manner, WOPR shall be deemed to have elected not to participate in the Capital Call. If WOPR elects to participate in a Capital Call pursuant to this Section 3.2.1, the Members shall each contribute their Percentage Share of the required capital within ten (10) business days after their receipt of the Capital Call. If WOPR elects (or is deemed to have elected) not to participate in a Capital Call pursuant to this Section 3.2.1, CCIG shall contribute one hundred percent (100%) of the required capital within ten (10) business days after CCIG's receipt of the Capital Call.

3.2.2 Second Tier Additional Contributions. With respect to Capital Calls for Additional Capital Contributions in excess of [REDACTED] (in the aggregate, each Member shall contribute its Percentage Share of the required capital within ten (10) business days after receipt of the applicable Capital Call.

All Additional Capital Contributions shall earn a Preferred Return.

3.3 Capital Contribution Default. Any Member that fails to contribute Additional Capital Contributions as required by Section 3.2 is referred to herein as a "Defaulting Member." Any Member that contributes Additional Capital Contributions as required by Section 3.2 is referred to herein as a "Non-Defaulting Member." Any Non-Defaulting Member may, at its election, contribute funds to the Company to cover any deficiency resulting from the Defaulting

event of a default with respect to a required Capital Contribution, the Non-Defaulting Member may elect among the following as is sole remedy for such default:

3.3.1 Loan.

3.3.2 Contribution.

3.4 Limitations. The provisions of this Article 3 are for the benefit of the Company only and not for the benefit of any creditor of the Company, and no creditor of the Company shall obtain any rights pursuant to the provisions of this Article 3 including, without limitation, any right to require that any Member provide any Capital Contribution to the Company. No Member shall be entitled to withdraw any portion of its Capital Contributions or Capital Account, or to receive any distribution from the Company, except as specifically provided in this Agreement or in the Act. No Member shall be entitled or obligated to make Capital Contributions to the Company other than in accordance with the provisions of this Article 3. Except for the Default Return and the Preferred Return (which are not considered interest), no Member shall be entitled to interest with respect to the Capital Contributions or the Capital Account of such Member. No Member shall have the right to demand and receive property other than cash as a return of its Capital Contributions. Each Member shall look only to the assets of the Company for the return of such Member's Capital Contributions, and if the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return such Capital Contributions, such Member shall have no recourse against

any other Member (including the Managing Members, Administrative Member or Accounting Member) for such return.

#### ARTICLE 4 DISTRIBUTIONS AND ALLOCATIONS

4.1 Distributable Cash. Distributable Cash, if and when available, shall be distributed at such times and in such amounts as may from time to time be determined by the Managing Members in accordance with the following:

4.1.1. Default Return. First, to the Non-Defaulting Member until the Non-Defaulting Member has received aggregate distributions under this Section 4.1.1 in an amount necessary to provide it with the Default Return with respect to the Non-Defaulting Member's Default Capital Contributions.

4.1.2. Default Contributions. Second, to the Non-Defaulting Member until the Non-Defaulting Member has received aggregate distributions under this Section 4.1.2 in an amount necessary to provide it with a return of its Default Capital Contributions.

4.1.3. Preferred Return. Distributable Cash shall be distributed among the Members pro rata in accordance with their respective unpaid Preferred Return until each Member has received pursuant to this Section 4.1.3, Distributable Cash equal in the aggregate to its total accrued but unpaid Preferred Return.

4.1.4. Initial and Additional Capital. Distributable Cash shall be distributed among the Members pro rata in accordance with their respective Initial and Additional Capital Contributions until each Member has received, pursuant to this Section 4.1.4, Distributable Cash equal in the aggregate to its total Initial and Additional Capital Contributions.

4.1.5. Net Profits. [REDACTED]

4.2 Income. Subject to the following provisions of this Article, Income shall be allocated among the Members in accordance with the following:

4.2.1 First, among the Members pro rata in proportion to the amount of Loss allocated to each Member pursuant to Section 4.3.2 until there has been allocated to each Member pursuant to this Section 4.2.1 an amount of Income equal to the amount of Loss so allocated.

4.2.2. Second, among the non-Delinquent Members pro rata in proportion to the amount of Distributable Cash to be received pursuant to Section 4.1.1 (Default Return) until there has been allocated to each such Member pursuant to this Section 4.2.2, an amount of Income equal to the Default Return accrued to such Member.

4.2.3 Third, among the Members pro rata in proportion to the amount of Distributable Cash to be received pursuant to Section 4.1.3 (Preferred Return) until there has been allocated to each Member pursuant to this Section 4.2.3, an amount of Income equal to the Preferred Return accrued to such Member.

4.2.4 Fourth, among the Members pro rata in proportion to the amount of Distributable Cash to be received pursuant to Section 4.1.5 until there has been allocated to each Member pursuant to this Section 4.2.4, an amount of Income equal to such amount.

4.3 Loss. Subject to the following provisions of this Article, Loss shall be allocated among the Members in accordance with the following:

4.3.1 First, among the non-Delinquent Members pro rata in proportion to the amount of Income allocated to each Member pursuant to Section 4.2.2 (Default Return), until there has been allocated to each Member pursuant to this Section 4.3.1 an amount of Loss equal to the amount of Income so allocated.

4.3.2 Second, among the Members pro rata in proportion to the amount of Income allocated to each Member pursuant to Section 4.2.3 (Preferred Return), until there has been allocated to each Member pursuant to this Section 4.3.2 an amount of Loss equal to the amount of Income so allocated.

4.3.3 Third, among the Members pro rata in proportion to the amount of Income allocated to each Member pursuant to Section 4.2.4, until there has been allocated to each Member pursuant to this Section 4.3.3 an amount of Loss equal to the amount of Income so allocated.

4.3.4 Thereafter, among the Members in proportion to their respective Percentage Interests.

4.4 Other Allocation Provisions. The following allocations shall, except as otherwise provided, be made in the following order:

4.4.1 If there is a net decrease in Membership Minimum Gain or any Member Minimum Gain attributable to any Member with respect to any taxable year or other period, prior to any allocation pursuant hereto, such Member shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount and manner required by Regulations Section 1.704-2(f) or Regulations Section 1.704-2(i)(4). The items to be allocated hereunder shall be determined in accordance with Regulations Section 1.704-2.

4.4.2 Nonrecourse Deductions for any taxable year or other period shall be allocated (as nearly as possible) under Regulations Section 1.704-2 among the Members in proportion to their respective Percentage Interests.

4.4.3 Any Member Nonrecourse Deductions for any taxable year or other period shall be allocated to the Members that bear the economic risk of loss with respect to the Member Nonrecourse Debt giving rise to such deductions, in accordance with the principles of Regulations Section 1.704-2(i).

4.4.4 Any Member who unexpectedly receives any adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which causes or increases a negative balance in such Member's Capital Account shall be allocated items of income sufficient to eliminate such increase or negative balance caused thereby as quickly as possible, to the extent required by such Regulations.

4.4.5 No allocation of Loss or deduction shall be made to any Member if such allocation would result in an Adjusted Capital Account Deficit for such Member. Any such disallowed allocation shall be allocated to the other Members to the extent such other Members are not limited in respect to the allocation of Losses pursuant to this Section. Notwithstanding the foregoing to the contrary, if each Member has an Adjusted Capital Account Deficit, Losses will be allocated to those Members having an adjusted tax basis in their Membership Interest pro rata in accordance with such adjusted tax basis. Any Loss reallocated pursuant to this Section shall be taken into account in computing subsequent allocations of Income and Loss and items thereof so that the total amount of Income and Loss allocated to each Member pursuant to Section 4.2 and Section 4.3, respectively, to the extent possible, shall equal the net amount that would have been allocated if no reallocation had occurred pursuant to this Section 4.4.5.

4.4.6 The allocations as set forth in Sections 4.4.1 through 4.4.5 above inclusive, are intended to comply with the requirements of the Regulations.

4.5 Code Section 704(c) Allocations. Notwithstanding any other provision of this Article 4, in accordance with the provisions of Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss and deduction arising with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take into account any variation between adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution utilizing any method authorized pursuant to Regulations Section 1.704-3, as may be agreed by the Managing Members and if the Managing Members cannot reasonably agree on a method, the "traditional method with curative allocations" approach shall be used. Allocations pursuant to this Section shall be made solely for purposes of federal, state, and local taxes, and shall not be taken into account in computing a Member's Capital Account or share of Income or Loss, or items thereof, or other items of distribution, pursuant to any provisions of this Agreement.

4.6 Allocation for Transferred Interest. If any Membership Interest or Economic Interest is transferred, or is increased or decreased by reason of admission of a new Member or

otherwise during any fiscal year of the Company, Income or Loss for such fiscal year shall be allocated in a manner which is in accordance with any method authorized by Section 706 of the Code and the Regulations thereunder, as may be selected by the Members.

4.7 In-Kind Distributions. Any non-cash assets realized by the Company in connection with the sale or other disposition of Company assets, may be distributed in-kind to the Members or to a collection account established for the purpose with any proceeds realized by such account to be distributed in accordance with the terms of this Article. The fair market value of any assets distributed in-kind shall be as reasonably agreed by the Member(s) receiving the in-kind distribution and the remaining Members.

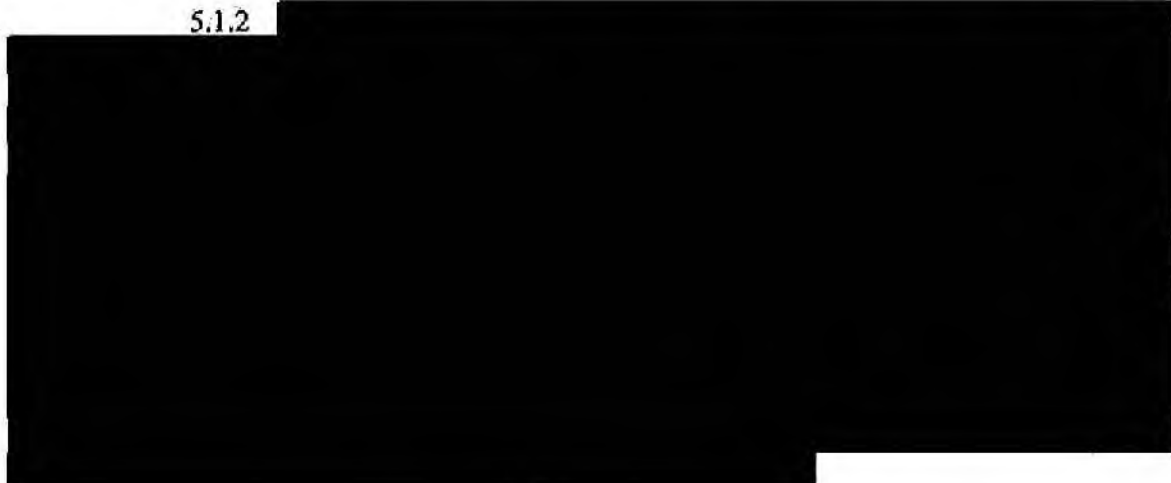
4.8 Consent by Members. The methods by which income, gain, loss, deduction and distributions are allocated and apportioned are hereby expressly consented to by each Member.

## ARTICLE 5 POWERS, RIGHTS AND DUTIES OF MEMBERS

### 5.1 Management of the Company.

5.1.1 Managing Members. Except to the extent expressly provided elsewhere in this Agreement (including Sections 5.1.3 and 5.1.5), the Managing Members shall manage and conduct the operations and affairs of the Company and make all decisions regarding the Company and its business and assets. Subject to any applicable limitations contained in this Agreement, the Managing Members shall have all the rights and powers of a Managing Member as provided in the Act and as otherwise provided by law. In dealing with any Managing Member acting on behalf of the Company, no person shall be required to inquire into the authority of such Managing Member to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Managing Members as set forth in this Agreement. All decisions of the Managing Members shall be made by a Majority-in-Interest vote.

#### 5.1.2



5.1.3 Administrative Member. WOPR shall be and is hereby appointed the initial Administrative Member, subject to all of the terms and conditions of this Agreement. WOPR shall remain as the Administrative Member until changed by action of the Managing Members or unless WOPR is terminated pursuant to the terms of this Agreement. Whenever an Annual Business Plan has been approved, WOPR shall be authorized to act as Administrative Member of the Company for the sole purpose of diligently carrying out the applicable Annual Business Plan. In its capacity as Administrative Member, WOPR shall have authority to conduct the day-to-day operations of the Company in accordance with the applicable Annual Business Plan and any other guidelines or policies approved by the Managing Members. Subject to the approval of the Managing Members, if such approval is required under this Agreement, the Administrative Member's duties shall include, without limitation:

- (a) any duties assigned to it under this Agreement;
- (b) overseeing, supervising, coordinating the Company's rail operations, including, but not limited to the following:
  - (i) the Company's performance of all contracts with third parties;
  - (ii) performing the following on a daily basis:
    - (A) Check the Railcar Management, Inc. software program ("RMI") and cars "spotted" by the Union Pacific ("UP") and Burlington Northern Santa Fe ("BNSF") railroads;
    - (B) Communicate with customers regarding times and locations to spot cars;
    - (C) Complete daily locomotive/trackmobile inspections pursuant to the Federal Railroad Administration's ("FRA") requirements;
    - (D) Complete switching activity with locomotive or trackmobile;
    - (E) Report all switching activity in RMI;
    - (F) Report all switching activity into data base for monthly reporting to FRA and the California Public Utilities Commission ("PUC");
    - (G) Fuel equipment and complete post inspections; and
  - (iii) performing the following on a monthly basis:
    - (A) Submit FRA and PUC reports regarding switching activity, employee activity and inspections;

- (B) Print and file RMI reports;
  - (C) Submit invoices to UP, BNSF and other customers;
- and
- (D) Complete and file monthly safety reports;

(c) subject to the availability of the funds therefor, obtaining and maintaining insurance coverage for the Company as required by the Managing Members,

(d) delivering to the Managing Members promptly upon the receipt or sending thereof, copies of all material notices, reports and communications between the Company and any customer, the City of Oakland, the Port of Oakland, the East Bay Municipal Utilities District ("EBMUD"), UP, BNSF, governmental agencies, neighboring property owners and/or lessors, community groups and other relevant third parties;

(e) depositing all receipts from operations to the appropriate Company bank account, which receipts shall not be commingled with any other funds or accounts of the Administrative Member;

(f) overseeing and coordinating the design and construction of all Company capital facilities;

(g) maintaining all Company equipment and capital facilities;

(h) obtaining and maintaining all applicable operating licenses, permits and other authorizations from the Surface Transportation Board and other applicable governmental and regulatory entities/agencies;

(i) maintaining any union affiliations and memberships; and

(j) if approved by the Managing Members and if the Administrative Member subcontracts with third parties or any of its Affiliates for the performance of any of the services to be performed by the Administrative Member, supervising and overseeing the performance of the services performed by such third parties or Affiliates.

#### 5.1.4 "For Cause" Remedies.

(a) Anything contained in this Agreement to the contrary notwithstanding, in the event that WOPR engages in any "for cause" behavior, CCIG shall have the absolute right, power and authority to elect among the following remedies as a result of such behavior: (i) cause WOPR to withdraw as a Member of the Company and assign its Membership Interest to CCIG in return [REDACTED] or (ii) remove WOPR as the Administrative Member, in which event:

(i) The Company may engage a third party to perform WOPR's responsibilities as the Administrative Member and WOPR's Percentage Interest shall

be reduced by an amount equal to two (2) times a fraction, the numerator of which is the amount paid to such third party and the denominator of which is the sum of all Capital Contributions to the Company; and

(ii) Distributions of Distributable Cash made pursuant to Section 4.1.5 shall be made pursuant to the Members' respective Percentage Interests.

In all events, if WOPR is removed as the Administrative Member "for cause" hereunder, then in addition to all the rights and remedies available to CCIG hereunder, CCIG shall have the right, but not the obligation, in its sole and absolute discretion: (i) to terminate any agreement between the Company and any WOPR Affiliate and after the date of termination, such Affiliate shall lose its right to receive all fees, to the extent accruing from and after the date of the "for cause" event occurred and (ii) the status of WOPR as the Administrative Member shall terminate, but WOPR shall retain its liability for all obligations incurred as the Administrative Member prior to such termination.

(b) The grounds for removal "for cause" shall mean one or more of the following:

(i) any willful misconduct or material breach by WOPR as Administrative Member in the discharge of its duties and obligations as Administrative Member which, other than in the case of willful misconduct, for which there shall be no cure period, is not cured within a Reasonable Period after written notice thereof has been given;

(ii) any fraud, negligence or willful misconduct concerning the financial condition of the Company or the performance by WOPR of its obligations or covenants under this Agreement or under any provision of applicable law related to the Company, including, without limitation, physical waste, removal or disposal of Company property by WOPR or its Affiliates;

(iii) any breach by the Company of its obligations to any lender resulting from fraud, negligence, willful misconduct or a breach by WOPR or its Affiliates of this Agreement or any of the applicable loan documents executed and delivered to such lender by WOPR or its Affiliates, which, other than in the case of fraud or willful misconduct, for which there shall be no cure period, is not cured prior to the earlier of (A) a Reasonable Period after written notice thereof has been given, or (B) the expiration of any notice and cure periods in such loan documents;

(iv) any of the following events or actions: (A) misappropriation of funds by WOPR (including distributions to partners/members), (B) amendment or modification by WOPR of any Company loan documents without the prior written consent of the Managing Members, (C) failure by WOPR to comply with any material legal requirement related to the Company which is not cured within a Reasonable Period, (D) failure by WOPR to maintain the Company property as required by this Agreement which is not cured within a fifteen (15) day period after written notice has been given, and (E) failure of

WOPR to maintain required insurance coverage or failure to pay insurance deductible amounts; and

(v) any of the following with respect to WOPR or any Affiliate of WOPR: (A) fraud, bad faith, willful misconduct, misrepresentation or gross negligence by WOPR or any of its Affiliates, or any principals, officers, general partners or members, or any agent or employee of any of them relating to the Company; and (B) a voluntary bankruptcy filing by WOPR or an involuntary filing against WOPR which is not dismissed within one hundred eighty (180) days (except if such involuntary action is brought by CCIG).

Each of the foregoing "for cause" events must be cured (to the extent such event can be cured) within a Reasonable Period (unless a shorter cure period is otherwise specified above and provided that, if any of the above events is committed by an employee of WOPR or its Affiliates at the direction of a WOPR principal, no cure period shall apply).

**5.1.5 Accounting Member.** CCIG is hereby appointed as the Accounting Member for the Company. Whenever an Annual Business Plan has been approved, CCIG shall be authorized to act as the Accounting Member of the Company for the sole purpose of diligently carrying out the duties set forth in this Section 5.1.5 consistent with the applicable Annual Business Plan. In its capacity as the Accounting Member, subject to the approval of the Managing Members, CCIG shall have authority and obligation to perform the following:

- (a) any duties assigned to it under this Agreement;
- (b) negotiate the terms of any Company loan with prospective lenders;
- (c) prepare and coordinate all draw request packages and otherwise comply with the requirements imposed under any Company loan or by the Managing Members with respect to the same;
- (d) subject to the availability of funds therefor, paying in a timely manner all non-disputed operating expenses of the Company in accordance with the terms of the Annual Business Plan or as otherwise provided herein and approved by the Managing Members, as applicable, including, but not limited to, real estate taxes;
- (e) open and maintain, in the name of the Company, the following bank accounts in a bank or savings and loan association, the deposits of which are insured up to applicable limits, by an agency of the United States government: (i) an operating account, from which CCIG shall pay operating expenses on a monthly basis ("**Operating Account**"); and (ii) such other accounts as may be required pursuant to the Annual Business Plan, it being understood that, subject to the cash management provisions of the Annual Business Plan and the terms of this Agreement, the Managing Members shall have control over such accounts; and
- (f) depositing all receipts from operations of the Property to the appropriate Company bank account, which receipts shall not be commingled with any other funds or accounts of CCIG.

5.2 Meetings of Managing Members. The Managing Members shall hold weekly meetings during any time period in which Company capital facilities are actively being designed or constructed and thereafter the Managing Members shall hold monthly meetings.

5.3 Records Maintained by Administrative Member. In addition to any reports required pursuant to Section 5.1.3:

(a) The Administrative Member shall maintain records of all transactions relating to the Company and of the Administrative Member's supervision, management and operation of the Company. The Administrative Member shall make such records available at any time for audit by the accountants of the Company or any Member and for inspection by the Company or any Member and their designees. The Administrative Member shall have the obligation to promptly duplicate and remit copies of any such records to the Company or such Member as the case may be.

(b) The Members may require the Administrative Member by a Majority-in-Interest vote to have all monies administered by the Administrative Member or due under this Agreement computed and certified as accurate by the Company's certified public accountant. During the term of this Agreement and for one (1) year thereafter, the Company's certified public accountant, any Member and their respective authorized agents shall have the right to verify information required under this Agreement by requesting, receiving, inspecting and auditing, at all reasonable times, any and all records referred to above wherever they may be located (or elsewhere if reasonably requested by the Administrative Member). If any such inspection or audit discloses an error of five percent (5%) or more in the reporting of amounts received or receivable, or amounts paid or payable, in any instance within a twelve-month period, then the Administrative Member shall immediately (subject to the review rights described below) pay to the Company the entire cost of the inspection and audit, without limiting the Company's rights against the Administrative Member at law or equity. Notwithstanding the foregoing, if the Administrative Member requests in writing the opportunity to review the audit obtained by the Company, then the Administrative Member shall have ten (10) business days from the date of such request to review the audit; provided, however, that upon the expiration of such ten (10) day period without withdrawal or modification of such requested demand by the Administrative Member (which shall be in the Administrative Member's sole discretion), such payment shall be due by the Administrative Member to the Company. If the inspection discloses an error of five percent (5%) or less, then subject to other applicable provisions of this Agreement, the cost of the audit shall be paid by the Company and a corrective allocation shall be made (as disclosed by said audit).

5.4 Reports Prepared by the Accounting Member. The Accounting Member shall keep, maintain and prepare the following relating to the Company:

(a) The books of account of the Company, at the Company's expense, shall be kept and maintained by the Accounting Member in accordance with the tax/accrual method, applied on a consistent basis applicable to residential real estate development. The Accounting Member shall prepare a reconciliation of such books and records to cash receipts and

disbursements. The books of account shall be kept at the principal place of business of the Accounting Member, and shall at all times be available for inspection by the Members.

(b) The Accounting Member shall, at its expense (excluding the retention of accounting firms to prepare required reviews or audits), furnish to the Members (i) on or before the 30<sup>th</sup> day after the end of each month (A) an unaudited statement setting forth and describing in reasonable detail the receipts and expenditures related to the Company during the preceding month and comparing the results of operations for such month and for the year to date to the appropriate Annual Business Plan together with a narrative summary discussing Company operations, variances from the Annual Business Plan, construction activity and any material operating issues for said preceding month, and (B) if requested by the Managing Members, a projected cash flow analysis for the next four (4) calendar quarters; and (ii) on or before forty-five (45) days after the end of each fiscal quarter (but sixty (60) days after the end of the year-end fiscal quarter) (A) an internally prepared income statement and balance sheet for the Property dated as of the end of such fiscal quarter reflecting the operating performance and financial condition of the Company in accordance with tax/accrual principles for and as of such quarter, and shall include a statement of the Members' Capital Accounts and any applicable return thereon, a statement of Distributable Cash, a projected cash flow analysis for the Company by fiscal year and a statement setting forth the Profits and Losses of the Property for such fiscal quarter, and (B) status reports outlining development progress. In addition, on or before ninety (90) days after the end of each fiscal year, the Accounting Member shall, at its expense, furnish to the Members an income statement and balance sheet of the Company dated as of the end of such fiscal year and referencing all of the information mentioned above with respect to the Company, such income statement and balance sheet reflecting the operating performance and financial condition of the Company in accordance with tax/accrual principals for and as of such fiscal year, to be reviewed or audited by an independent firm of certified public accountants as selected by the Managing Members if the Managing Members so request (with any such review or audit requested by the Managing Members to be a Company expense).

(c) Coordinate tax return preparation for the Company with outside accounting firm designated by the Managing Members as a Company cost.

5.5 Scope of Authority. Except as expressly provided in this Agreement or policies and guidelines previously approved by the Managing Members, no non-Managing Member shall have any authority to bind or act for, or assume any obligation or responsibility on behalf of, the other Members or the Company. Any non-Managing Member shall be responsible to, and shall indemnify and hold harmless, the other Members and the Company for any liabilities or expenses of any nature arising out of or resulting from such unauthorized action.

5.6 Indemnification. The Company ("Indemnitor") shall indemnify, defend and hold harmless to the extent provided below in this Section 5.6, the Members (including in any capacity as Managing Member, Administrative Member or Accounting Member), their directors, officers, constituent partners or members, employees, shareholders and other Affiliates (individually, also referred to herein as an "Indemnitee") against all claims, suits, actions, losses, liabilities, reasonable fees of attorneys, accountants and other professionals, judgments, fines, penalties, including excise and similar taxes, settlements, and reasonable expenses ("Losses")

actually incurred by such Indemnitee in connection with the defense and/or settlement of such action, suit or proceeding, if, in the case of the Administrative Member acting in such capacity, such Losses are not attributable to the Administrative Member's fraud, bad faith, willful misconduct or gross negligence, or, in the case of the other Members, if such Indemnitee acted in good faith and, in the case of the exercise of authority by the Indemnitee under the Act or this Agreement, in a manner reasonably believed by such Indemnitee to be in the best interests of the Company and in a manner commercially reasonable and prudent under the circumstances and, in all other cases, if the Indemnitee's conduct was at least not opposed to the Company's best interests, and with respect to any criminal action or proceeding, the Indemnitee did not have reasonable cause to believe that his conduct was unlawful. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that an Indemnitee did not act in good faith and in a manner reasonably believed by such Indemnitee to be in the best interests of the Company or not opposed to the Company's best interests.

5.7 Meetings. No annual or regular meetings of Members are required. Meetings of the Members may be called at any time by the Administrative Member or by any Member or Members holding Percentage Interests aggregating more than ten percent (10%) for purposes of considering matters subject to the approval of the Members pursuant to this Agreement. Notice of each meeting of the Members shall be given to each Member by the Administrative Member not less than ten (10) days nor more than sixty (60) days prior to the date of such meeting. Each notice hereunder shall specify the place, date and hour of the meeting, and the general nature of the business to be transacted. Any Member may attend a meeting by telephone. Further, any Member may grant a proxy to another Member or other Person to exercise all the voting rights attributable to such granting Member. Attendance at a meeting, whether in person, by telephone or by proxy, shall constitute a waiver of notice of that meeting.

5.8 Action By Written Consent. Any action that may be taken at a meeting of the Members may be taken without a meeting, if a consent in writing setting forth the action so taken, is executed by those Members required to approve the proposed action pursuant to this Agreement. A Member shall respond to any request for approval given by another Member within ten (10) days following the date on which such request for approval is given. All such consents shall be filed by the Administrative Member and maintained in the Company records.

5.9 No Withdrawal By Member. No Member shall be entitled to withdraw or resign from the Company. In the event that, notwithstanding the immediately preceding sentence, a Member does withdraw or resign from the Company, such withdrawing or resigning Member shall not be entitled to receipt of any payment or distribution from the Company solely as a result of such resignation or withdrawal, and effective as of the date of such resignation or withdrawal, and continuing thereafter, such Member shall be entitled solely to the rights to which a holder of an Economic Interest is entitled pursuant to this Agreement, shall not be entitled to participate in any vote of the Members or otherwise in the management of the business of the Company, and will otherwise continue to be deemed an owner and Member of the Company.

5.10 Compensation to Members or Managing Member. Except as set forth in this

Section 5.10, no compensatory payment shall be made by the Company to any Member or any member or employee thereof, for services to the Company.

5.10.1 Administrative Member. From and after the completion of construction of the new Port Rail Terminal to be constructed within the former Oakland Army Base, and thereafter during WOPR's appointment as the Administrative Member, the Company shall pay to WOPR an amount equal [REDACTED] in return for WOPR's performance of its services as the Administrative Member. Subject to CCIG's prior written approval, [REDACTED]

5.10.2 Accounting Member. From and after the completion of construction of the new Port Rail Terminal to be constructed within the former Oakland Army Base, the Company shall pay to CCIG an amount equal [REDACTED] CCIG's performance of its services as the Accounting Member. In addition to the fees required under this Section 5.10.2, the Company shall reimburse CCIG on a monthly basis for a pro rata share (based on a forty (40) hour work week) of the cost (salary and benefits) of any employees of CCIG or its Affiliates that are "leased" to the Company, including such employees that are involved in the performance of the duties set forth in Section 5.1.5.

The fees (and not reimbursements) payable to WOPR and CCIG pursuant to this Section 5.10 shall be paid on an estimated, monthly basis on or before the fifth (5<sup>th</sup>) day of each month based on an amount equal to on twelfth (1/12<sup>th</sup>) of the applicable percentage of the estimated Company revenue included in each approved Annual Business Plan. Such payment shall be subject to an annual true-up on or before April 1<sup>st</sup> of the succeeding year. Any underpayment shall be paid to the applicable Member within ten (10) business days after the date of the true-up and any overpayment shall be credited to subsequent estimated payments.

5.11 Rail Road Right of Way Sublease. As part of the Other Projects, an affiliate of CCIG has the right to ground lease the West Gateway, which includes the railroad right of way connecting the City-owned portions of the former Oakland Army Base to the future Port Rail Terminal (the "RR ROW"). The Company shall enter into a sublease with the CCIG affiliate providing the Company with the right and obligation to operate the RR ROW pursuant to the master ground lease. Such sublease shall include a sublease of the City's rights to the Port Rail terminal (including first call rights on 50% of the unit train track capacity and first come first serve rights to the manifest yard). The sublease will be executed concurrently with the effective date of the master ground lease (currently estimated to be April 15, 2015) and will require the Company to commence construction of the RR ROW improvements within six (6) months of the effective date and complete the same within two (2) years after the effective date. The sublease will also require the Company to participate in the community benefits and implement the CEQA SCA/MMRP associated with the master lease, which include, but are not limited to, agreeing to a project labor agreement for the construction of the RR ROW improvements and

participation in the local hiring program for operations jobs. The sublease shall require the Company to pay the actual base and participation rent (plus a fifteen percent (15%) premium thereon), the actual property taxes and assessments applicable to the RR ROW and a pro rata share of all other actual costs applicable to the RR ROW (insurance, etc.).

5.12 EBMUD MOA. The Company shall assume CCIG Oakland Global, LLC's obligations under that certain Memorandum of Agreement Between the City of Oakland, EBMUD and CCCIG Oakland Global, LLC, dated July 19, 2012, as amended (the "EBMUD MOA"), within five (5) Business Days after receipt of CCIG's written request.

## ARTICLE 6

### TRANSFER OF COMPANY INTERESTS; NEW MEMBERS

#### 6.1 Voluntary Transfers.

6.1.1 Transfers To Other Members. A Member may transfer all or any portion of his or its Membership Interest to another Member at any time. Any transfer pursuant to this Section 6.1.1 shall not require the consent of any other Member and shall not be subject to the right of first refusal described in Section 6.2.

6.1.2 Transfers To Specified Donees. Subject to all limitations contained in Section 6.3 and provided that such action is not a Prohibited Transaction, a Member may transfer all or any portion of its Membership Interest to specified relatives ("Specified Donees") at any time in accordance with this Section 6.1.2. Any transfer pursuant to this Section 6.1.2 shall not require the consent of any other Member and shall not be subject to the right of first refusal described in Section 6.2. The transfers pursuant to this Section 6.1.2 are as follows: transfers to an entity in which a Member or its constituent parties own (a) at least 51% of the ownership and economic interest and (b) an equal voting interest.

6.1.3 CCIG Permitted Transfers. Subject to the requirements of Section 6.3, CCIG shall be entitled to transfer up to a portion of its Membership Interest constituting a forty percent (40%) interest in the Company to any third party.

6.1.4 Other Transfers. In the case of any voluntary transfer of a Membership Interest pursuant to a transaction other than that described in Sections 6.1.1, 6.1.2 and 6.1.3, the transfer shall be subject to the right of first refusal described in Section 6.2.

#### 6.2 Right of First Refusal.

6.2.1 Application of Right of First Refusal. The right of first refusal set forth in this Section 6.2 shall be applicable in the case of any voluntary transfer by a Member of its Membership Interest pursuant to a transaction other than those described in Sections 6.1.1 and 6.1.2.

6.2.2 Sales Offer. If any Member ("Selling Member") receives a bona fide offer

("Sales Offer"), whether or not solicited by the Selling Member, from a person not then a Member or a Specified Donee, to purchase all or any portion of the Selling Member's Percentage Interest, and if the Selling Member is willing to accept the Sales Offer, the Selling Member may transfer the portion of the Selling Member's Percentage Interest specified in the Sales Offer ("Offered Interest") only after the Selling Member has afforded the other Members ("Offeree Members") the right of first refusal described in this Section 6.2.

**6.2.3 Notice of Offer.** The Selling Member shall give written notice ("Notice of Offer") to each of the Offeree Members of the Offered Interest the Selling Member proposes to transfer, the price and all other terms on which the Offered Interest is proposed to be transferred, and the identity of the proposed transferee. The purchase price shall be payable all in cash or in cash and promissory note(s).

**6.2.4 Notice of Election to Acquire.** Within 20 days after receipt of the Notice of Offer, any one or more of the Offeree Members may deliver to the Selling Member and to each of the other Offeree Members written notice of election ("Notice of Election to Acquire") to purchase all or a specified portion of the Offered Interest. All Offeree Members who deliver a Notice of Election to Acquire to the Selling Member and to the other Offeree Members shall hereinafter be referred to as "Acquiring Members."

**6.2.5 Acquisition of Offered Interest.** If the portions of the Percentage Interest which the Acquiring Members state they desire to acquire (in the Notices of Election to Acquire) equal or exceed the Offered Interest, the Selling Member shall sell, and the Acquiring Members shall purchase, the Offered Interest. The Acquiring Members shall acquire the Offered Interest at the price, and payable on the terms, specified in the Notice of Offer.

**6.2.6 Acquisition of Portions of Offered Interest.** If the aggregate portions of the Percentage Interests specified in the Notices of Election to Acquire which are timely given exceed the Offered Interest, the Acquiring Members shall attempt to agree among themselves upon which portion of the Offered Interest each shall acquire. If the Acquiring Members cannot agree upon the portions of the Offered Interest each is to acquire, they each shall purchase such a portion of the Offered Interest (and be liable for such a portion of the total purchase price for the Offered Interest) equal to the lesser of the following:

(a) **Amount In Notice.** The portion of the Offered Interest stated in the Notice of Election to Acquire given by the Acquiring Member; or

(b) **Proportionate Share.** An amount equal to product of (i) the Offered Interest, and (ii) a fraction equal (A) the Percentage Interest of the Acquiring Member over (B) combined Percentage Interests of all Acquiring Members.

**6.2.7 All Offered Interest Not to Be Acquired.** If the aggregate portions of the Percentage Interests stated in the Notices of Election to Acquire which are timely given by Acquiring Members are less than the entire Offered Interest, all of the Notices of Election to Acquire shall be ineffective, and the Selling Member shall not be obligated to sell, nor shall the

other Members be entitled or obligated to purchase, all or any part of the Offered Interest for a period of ninety (90) days after the twenty (20) day period specified in Section 6.2.4. The Selling Member shall then transfer the Offered Interest to the transferee specified in the Notice of Offer on the same terms (including price) and conditions stated in the Notice of Offer. If the sale to the transferee stated in the Notice of Offer, on the terms and conditions specified in the Notice of Offer, is not consummated within ninety (90) days after the twenty (20) day period specified in Section 6.2.4, then the right of first refusal as set forth in this Section 6.2 again shall be effective as to the Selling Member's Percentage Interest.

6.3 Assumption of Liabilities. The transferee of all or any part of a Membership Interest shall acquire so much of the transferor's Capital Account, and its credits for capital, contributions, Unreturned Capital and Outstanding Preferred Return, as are attributable to the portion of the Membership Interest transferred. No transfer of a Membership Interest, whether or not made in compliance herewith, shall be effective to release or in any way discharge the transferor from all obligations and liability hereunder attributable to the transferred Membership Interest, unless and until (a) the transferee expressly assumes, in writing, all such obligation and liability, and (b) the transferee is admitted as a Member in accordance with this Agreement.

6.4 Ports of America. Subject to the provisions of Section 6.3, the Members hereby approve of the admission of Ports America Group, Inc. or its affiliate ("Ports America") as a new member or the merger of the Company with Ports America to accomplish the transactions contemplated and approved pursuant to the letter of intent dated July 10, 2013.

## ARTICLE 7 ACCOUNTING, RECORDS

7.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of the Company's operations recorded, in accordance with the Company's accounting policies. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its executive offices all of the following books and records of the Company:

7.1.1 A current record of the full name and last known business or residence address of each Member, Substitute Member, and Assignee, set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest for each Member, Substitute Member and Assignee;

7.1.2 A copy of the Articles;

7.1.3 Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

7.1.4 A copy of this Agreement and any and all amendments thereto;

7.1.5 Copies of the financial statements of the Company, if any, for the six (6) most recent fiscal years; and

7.1.6 The Company's books and records (including minutes of Member meetings) as they relate to the internal affairs of the Company for at least the current and past four (4) fiscal years.

7.2 Delivery to Members and Inspection. Upon the request of any Member for purposes reasonably related to the interest of that Person as a Member, the Accounting Member shall promptly deliver to the requesting Member, at the expense of the Company, a copy of the information required to be maintained under Sections 7.1.1, 7.1.2 and 7.1.4 above. Further, upon the request of any Member for purposes reasonably related to the interest of that person as a Member, such Member shall have the right to inspect and copy during normal business hours any of the records described in Sections 7.1.1 through 7.1.6 above.

7.3 Tax Information. The Accounting Member shall cause to be prepared, at least annually, at Company expense, the information necessary for the preparation of the Members' and Assignees' federal and state returns. The Accounting Member shall send or cause to be sent to each Member or Assignee following each taxable year, such information as is necessary to complete federal and state income or information returns, together with a copy of the Company's federal, state and local income tax or information returns for that taxable year.

7.4 Filings. The Accounting Member, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Accounting Member, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other applicable laws, rules and regulations.

7.5 Funds of the Company. The Accounting Member shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company and shall not permit the funds of the Company to be commingled in any fashion with the funds of the Accounting Member or any other Person. All expenses of the Accounting Member incurred for the benefit of the Company shall be paid by the Company.

7.6 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Accounting Member.

7.7 Tax Matters. The Accounting Member shall from time to time cause the Company to make such tax elections as the Accounting Member reasonably deems to be in the best interests of the Company and the Members. The Accounting Member shall act as the "Tax Matters Partner" as defined in Section 6231(a)(7) of the Code and shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the

Company funds for professional services and costs associated therewith. The Accounting Member shall oversee the Company tax affairs in the overall best interest of the Company.

## **ARTICLE 8**

### **DISSOLUTION OF THE COMPANY**

**8.1 Dissolution, Liquidation, and Termination Generally.** The Company shall be dissolved upon the first to occur of any of the following:

8.1.1 The sale or disposition of all of the assets of the Company and the receipt, in cash, of all consideration therefor;

8.1.2 The determination of the Members to dissolve the Company; and

8.1.3 The occurrence of any event which, as a matter of law, requires that the Company be dissolved.

**8.2 Liquidation and Termination.** Upon dissolution of the Company, unless it is continued as provided above, the Accounting Member shall act as liquidator or may appoint one or more other Persons as liquidator; however, if the Company is dissolved because of an event occurring with respect to the Accounting Member, the liquidator shall be one or more Persons selected in writing by the Managing Members that are not otherwise the Accounting Member. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein. The costs of liquidation shall be a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managing Members hereunder. The steps to be accomplished by the liquidator are as follows:

8.2.1 as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a firm of certified public accountants acceptable to the Managing Members of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution shall occur or the final liquidation shall be completed, as applicable;

8.2.2 the liquidator shall pay all of the debts and liabilities of the Company or otherwise make adequate provision therefor (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

8.2.3 all remaining assets of the Company shall be distributed to the Members as follows: the liquidator may sell any or all Company property and the sum of (1) any resulting gain or loss from each sale plus (2) the fair market value of such property that has not been sold shall be determined and (consistent with the allocation scheme set forth in Article 4) income, gain, loss, and deduction inherent in such property (that has not already been allocated and/or reflected in the Capital Accounts previously) shall be allocated among the Members and the sale

proceeds (or Company property if the assets are not sold) shall be distributed in accordance with the distribution provisions set forth above in Section 4.1 (taking into account the concepts described in Section 2.4 to the extent relevant).

8.3 Deficit Capital Accounts. No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.

8.4 Certificate of Cancellation. On completion of the distribution of Company assets, the accounting Member (or such other person as the Act may require or permit) shall file a Certificate of Cancellation with the Secretary of State of California and take such other actions as may be necessary to terminate the existence of the Company.

## **ARTICLE 9 MISCELLANEOUS**

9.1 Waiver of Partition. Each Member hereby irrevocably waives any and all rights to maintain an action for partition or to otherwise compel any sale with respect to any assets or property of the Company, or otherwise with respect to the interest of such Member in the Company, except as may be expressly provided in this Agreement. No Member shall, either directly or indirectly, undertake, aid or solicit any other Person to undertake, any action to require partition or appraisal of the Company or any of its assets or property or in connection therewith to cause the sale of any assets or property of the Company.

9.2 Successors. This Agreement shall be binding on and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns, provided that no benefit shall inure to Assignees acquiring any interest in violation of the provisions of this Agreement.

9.3 Captions. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience only and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

9.4 Severability. In the case that any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.5 Further Assurances. Upon the request of any Managing Member, each Member shall execute and deliver any and all further instruments and documents and take all actions as may be reasonably required to effectuate the terms and provisions of this Agreement provided, however, that no Member shall be obligated under this Section to execute any instrument or document which would impair its rights or enlarge its obligations hereunder.

9.6 Enforcement. Should any Member institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party or parties shall be entitled to recover from the other party or parties all costs and expenses (including reasonable attorneys' fees) incurred by such prevailing party or parties in connection with such action or proceeding. The phrase "prevailing party" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise.

9.7 Controlling Law. This Agreement shall be governed by and be construed according to the internal laws of the State of California without reference to any principles of conflicts of law.

9.8 Number: Gender. Whenever required by the context hereof, the singular shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa.

9.9 Notices. All notices, requests or demands to a party hereunder shall be in writing and shall be given or served upon the other party by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, to the address set forth on Schedule 1.9. Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof, three (3) business days after having been mailed as provided above, or upon delivery by a commercial courier, as the case may be. Notices may be given by facsimile and shall be effective upon the transmission of such facsimile notice provided that the facsimile notice is transmitted on a business day and a copy of the facsimile notice together with evidence of its successful transmission indicating the date and time of transmission is sent on the day of transmission by recognized overnight carrier for delivery on the immediately succeeding business day. Each party shall be entitled to modify its address by notice given in accordance with this Section.

9.10 Time. Time is of the essence in the performance of each party's obligation hereunder.

9.11 No Waiver. No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.

9.12 Schedules. All schedules and exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

9.13 Entire Agreement. This Agreement and the Management Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and this Agreement and the Management Agreement supersede all prior and contemporaneous agreements, representations and understandings of the parties.

9.14 Amendments. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the parties to this Agreement.

9.15 Representation. Each Member has been represented by independent counsel of such Member's choice. Notwithstanding the provisions of Section 1654 of the California Civil Code or any other similar statute, this Agreement shall be interpreted as though all of the Parties hereto had equally drafted this Agreement.

9.16 Counterparts. This Agreement, and any amendment hereto, may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument and shall be binding on the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile also shall deliver a manually executed counterpart of this Agreement, but failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, to be executed as of the day and year first above written.

California Capital & Investment Group, Inc.,  
a California corporation

By: \_\_\_\_\_

PHILIP H. TACAMU

West Oakland Pacific Railroad,  
a California limited liability company

By: \_\_\_\_\_

## **EXHIBIT A DEFINITIONS**

**Act.** "Act" means Chapter 3, Title 2.5, of the California Corporations Code, commonly known as the Beverly-Killea Limited Liability Company Act, as in effect on the date hereof and as the same may be amended from time to time hereafter.

**Accounting Member.** "Accounting Member" means CCIG.

**Acquiring Member.** "Acquiring Member" means all Offeree Members who deliver a Notice of Election to Acquire to the Selling Member and to the other Offeree Members.

**Additional Capital Contributions.** "Additional Capital Contributions" has the meaning set forth in Section 3.2 of this Agreement.

**Adjusted Capital Account Deficit.** "Adjusted Capital Account Deficit" means, with respect to any Member, the amount of the deficit balance, if any, in such Member's Capital Account as of the end of any fiscal year or other period as (i) credited by any amount that such Member is obligated to restore or is deemed obligated to restore pursuant to the next to the last sentence of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) debited by the amount of any items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

**Affiliate.** "Affiliate" means, with respect to a Person, another Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Person in question. The term "control" as used in the preceding sentence means, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than twenty five percent (25%) of the voting rights attributable to the shares of the controlled corporation, and, with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

**Agreement.** "Agreement" means the Operating Agreement of the Company, including this Exhibit and all other exhibits and schedules attached to this Agreement, as amended from time to time.

**Annual Business Plans.** "Annual Business Plan" means the Approved Initial Business Plan and any subsequent business plan approved pursuant to Section 5.1.2.

**Bankruptcy.** "Bankruptcy" means any of (a) the filing of an application for, or the consent to, the appointment of a trustee, receiver, custodian or liquidator of all or any portion of a Person's assets; (b) the entry of an order for relief with respect to a Person in proceedings under the United States Bankruptcy Code, or any similar laws of any applicable foreign jurisdiction, as amended or superseded from time to time; (c) the making of a general assignment for the benefit

of creditors; (d) the entry of an order, judgment or decree by any court of competent jurisdiction appointing a trustee, receiver, custodian, or liquidator of all or any portion of a Person's assets unless the proceedings and the Person appointed are dismissed within ninety (90) days; (e) the failure generally by any Person to pay its debts as such debts become due within the meaning of section 304(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or any parallel provisions of law in any applicable foreign jurisdiction, or (f) the admission in writing of such Person's inability to pay its debts as they become due.

**BNSF.** "BNSF" means the Burlington Northern Santa Fe Railway.

**Book Value.** "Book Value" means, with respect to any asset, such asset's adjusted basis for federal income tax purposes, except that (a) if any asset is contributed to the Company the initial Book Value of such asset shall equal its gross fair market value as of the date of contribution as reasonably agreed by the contributing Member and the Managing Member, and (b) the Book Values of all Company assets may be adjusted to equal their respective gross fair market values, as reasonably determined by the Managing Member, upon the occurrence of (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution, (ii) the distribution by the Company to a Member of more than a de minimis amount of property or money as consideration for an interest in the Company, and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), excluding any liquidation in connection with a termination of the Company pursuant to Section 708 of the Code; provided, however, that any adjustment pursuant to subsections b(i) or b(ii) above shall be made only if the Managing Members reasonably determines that such adjustment is necessary or appropriate to reflect the relative interests of the Partners in the Company. The Book Value of all assets shall thereafter be adjusted by depreciation as provided in Regulations Section 1.704-1(b)(2)(iv)(g).

**Business Day.** "Business Day" means Monday through Friday of each week, except that a legal holiday recognized as such by the Government of the United States or the State of California shall not be regarded as a Business Day.

**Capital Account.** "Capital Account" means a separate account established and maintained on the books of the Company for each Member pursuant to Section 2.1 of this Agreement.

**Capital Contribution.** "Capital Contribution" means the cash contributions made or to be made by any Member to the Company and the fair market value of any property (other than money) contributed or to be contributed by any Member to the Company, net of liabilities secured by such contributed property which the Company is considered to assume or take subject to pursuant to Section 752 of the Code.

**CCIG.** "CCIG" means the California Capital & Investment Group, Inc.

**CCIG Rights.** "CCIG Rights" is defined in Section 3.1.1(c).

**City.** "City" means the City of Oakland, California.

**Code.** "Code" means the Internal Revenue Code of 1986, as amended from time to time and any successor statute thereto. Any reference herein to a particular provision of the Code shall mean, where appropriate, the corresponding provision of any successor statute to such provision.

**Company.** "Company" means Oakland Global Rail Enterprise, LLC.

**Default Capital.** "Default Capital" has the meaning set forth in Section 3.3.2 of this Agreement.

**Default Capital Contributions.** "Default Contributions" has the meaning set forth in Section 3.3.2 of this Agreement.

**Default Loan.** "Default Loan" has the meaning set forth in Section 3.3.1 of this Agreement.

**Defaulting Member.** "Defaulting Member" has the meaning set forth in Section 3.3 of this Agreement.

**Default Return** "Default Priority Preferred Return" means an amount equal to twenty (20%) per annum, based upon a 360-day year, for the actual number of days for which the Default Return is being determined, cumulative and compounded monthly, based upon the amount of the Default Contributions which have not theretofore been returned to the Members and any accrued but unpaid Default Return thereon.

**Delinquent Member.** "Delinquent Member" has the meaning ascribed thereto in Section 3.4.

**Dissolution Event.** "Dissolution Event" means one or more of the withdrawal, resignation, retirement, expulsion, Bankruptcy, or dissolution of any Member.

**Distributable Cash.** "Distributable Cash" means at the time of determination all cash funds of the Company which the Managing Members deem available for distribution to the Members, taking into account all debts, liabilities, and obligations of the Company then due, working capital and other amounts which the Managing Members deem necessary or appropriate for the Company's business, and reserves in such amounts as the Managing Members deem necessary or appropriate. Distributable Cash shall not include any cash, the distribution of which (a) would cause the Company to be insolvent or unable to pay its obligations as such obligations become due or are scheduled to be paid or (b) would otherwise be prohibited by applicable law.

**EBMUD.** "EBMUD" means the East Bay Municipal Utility District.

**EBMUD MOA.** "EBMUD MOA" is defined in Section 5.12.

**Economic Interest.** "Economic Interest" means the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including without limitation, the right to vote on or participate in the management of the Company, to receive notices of meetings of Members, to call meetings of Members, to

inspect the books and records of the Company, or to receive or inspect any other information concerning the business and affairs of the Company.

**Effective Date.** "Effective Date" is that Parties have entered into this Agreement and listed above in the Preamble.

**FRA.** "FRA" means the Federal Railroad Administration.

**Income and Loss.** "Income" and "Loss" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined by the Company's accountants in accordance with Section 703(a), including all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1), subject to the following adjustments:

(i) Any income of the Company exempt from federal income tax and not otherwise taken into account in computing Income or Loss shall be added to such taxable Income or Loss.

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Income or Loss shall be subtracted from Income or Loss.

(iii) If the assets of the Company are revalued on the Company's books to reflect their fair market value in accordance with Regulations Section 1.704-1(b)(2)(iv)(f), the amount of the resulting upward or downward adjustment (to the extent not previously taken into account) shall be taken into account for purposes of computing Income or Loss.

(iv) Gain or Loss resulting from the disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the asset disposed of, notwithstanding that the adjusted tax basis for that asset differs from its Book Value.

(v) In lieu of depreciation, amortization or other cost recovery deductions which may be taken into account for federal income tax purposes, there shall be taken into account depreciation for such fiscal year or other period determined in accordance with Regulations Section 1.704-1(b)(2)(iv)(g).

(vi) Notwithstanding any other provision of this definition, any items of income, gain, loss or deduction which are specially allocated pursuant to Section 4.4 shall not be taken into account in computing Income or Loss, but shall be separately allocated to the Partners in accordance with Section 4.4.

**Indemnitee.** "Indemnitee" has the meaning set forth in Section 5.6 of the Agreement.

**Indemnitor.** "Indemnitor" has the meaning set forth in Section 5.6 of the Agreement.

**Initial Capital Contributions.** "Initial Capital Contributions" has the meaning set forth in Section 3.1 of the Agreement.

**Losses.** "Losses" has the meaning set forth in Section 5.6 of the Agreement.

**Majority-in-Interest Vote.** "Majority-in-Interest Vote" means a vote determined by the approval of the Managing Members that hold a majority of the Percentage Interests of the Managing Members.

**Managing Members.** "Managing Members" means CCIG and WOPR.

**Member.** "Member" means each Person who has been admitted to the Company as a Member in accordance with the provisions of this Agreement, including Substitute Members, who have not become the subject of a Dissolution Event or ceased to be a Member in accordance with Article 7 or Article 8, or for any other reason.

**Member Minimum Gain.** "Member Minimum Gain" or "Membership Minimum Gain" means the "member nonrecourse debt minimum gain" as defined in Regulations Section 1.704-2(i)(2).

**Member Nonrecourse Debt.** "Member Nonrecourse Debt" has the meaning ascribed to the term partner nonrecourse debt in Regulations Section 1.704-2(b)(4).

**Member Nonrecourse Deductions.** "Member Nonrecourse Deductions" has the meaning ascribed to such term partner nonrecourse deductions in Regulations Section 1.704-2(i)(2).

**Membership Interest.** "Membership Interest" means a Member's entire interest in the Company including, without limitation, the Member's Economic Interest and the right to vote and participate in management of the Company, to call meetings of Members, to receive notices of meetings of Members, to inspect the books and records of the Company as may be permitted herein, and to receive information concerning the business and affairs of the Company.

**Net Capital Transaction Proceeds.** "Net Capital Transaction Proceeds" means the proceeds from (a) any financing or refinancing of the Property or any part thereof, and (b) any sale, disposition, taking or loss (including, but not limited to, the proceeds from any eminent domain proceeding or conveyance in lieu thereof or from title insurance or casualty insurance, other than rental income insurance) of the Property or any part thereof (other than the sale of condominium units), less payment of all costs and other expenses related thereto, any amounts expended to repair or replace any part of the Property taken or destroyed and any other obligations of the Company.

**Non-Defaulting Member.** "Non-Defaulting Member" has the meaning set forth in Section 3.3 of the Agreement.

**Nonrecourse Deductions.** "Nonrecourse Deductions" has the meaning ascribed to such term in Regulations Section 1.704-2(b)(1).

**Notice of Election to Acquire.** "Notice of Election to acquire" is defined in Section 6.2.4.

**Notice of Offer.** "Notice of Offer" is defined in Section 6.2.3.

**Offeree Member.** "Offeree Member" has the meaning set forth in Section 6.2.2 of the Agreement.

**Offered Interest.** "Offered Interest" means all or any part of a Member's interest in this Company which is proposed to be transferred by such Member.

**Operating Account.** "Operating Account" has the meaning set forth in Section 5.1.5(e) of the Agreement.

**Other Projects.** "Other Projects" is defined in Section 1.10.1.

**Percentage Interest.** "Percentage Interest" means, with respect to each Member, a percentage equal to a fraction,

the numerator of which is equal to the aggregate amount of the Capital contributed by such Member (excluding any Overrun Capital), and

the denominator of which is equal to the aggregate amount of the Capital contributed by all Members (excluding any Overrun Capital).

The Percentage Interests are subject to adjustment pursuant to this Agreement.

**Person.** "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, association or other entity.

**Preferred Return.** "Preferred Return" means, with respect to each [REDACTED] on the amount of the applicable Capital Contributions made by such Member to the Company remaining from time to time unrepaid to such Member.

**Prior Work Product.** "Prior Work Product" is defined in Section 1.3.1(b).

**Port.** "Port" means the Port of Oakland.

**PUC.** "PUC" means the California Public Utilities Commission.

**Reasonable Period.** "Reasonable Period" means, with respect to any defaulting Member, a period of 30 calendar days after such defaulting Member receives written notice of its default from a non-defaulting Member; provided, however, that if such a default cannot be reasonably cured within such 30 day period, the period shall continue, if such defaulting Member

commences to cure the default within such 30 day period, for so long as such defaulting Member diligently prosecutes the cure to completion up to a maximum of 120 calendar days.

**Regulations.** "Regulations" means the regulations at the time of determination which have been issued by the U.S. Department of Treasury pursuant to its authority under the Code and which are enforced as final or temporary regulations.

**RMI.** "RMI" means the Railcar Management Company, Inc. software system.

**RR ROW.** "RR ROW" is defined in Section 5.11.

**Sales Offer.** "Sales Offer" is defined in Section 6.2.2.

**Selling Member.** "Selling Member" has the meaning set forth in Section 6.2.2 of the Agreement.

**Specified Donee.** "Specified Donee" is defined in Section 6.1.2.

**UP.** "UP" means the Union Pacific Rail Company.

**WOPR.** "WOPR" means West Oakland Pacific Railroad, a California limited liability company.

**WOPR Rights.** "WOPR Rights" has the meaning defined in Section 3.1.2(b) of the Agreement.

**SCHEDULE 1.9**  
**MEMBERS**

| <u>Member</u>                                  | <u>Address</u>                                                                | <u>Initial<br/>Percentage<br/>Interest</u> |
|------------------------------------------------|-------------------------------------------------------------------------------|--------------------------------------------|
| 1. California Capital & Investment Group, Inc. | The Rotunda Building<br>300 Frank Ogawa Plaza, Suite 340<br>Oakland, CA 94612 | 84%                                        |
| 2. West Oakland Pacific Railroad, LLC          | 2498 West 19 <sup>th</sup> Street<br>Oakland, CA 94607                        | 16% CUS                                    |

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**SCHEDULE 3.1.1(a)**  
**Prior Work Product**

Oakland Army Base Rail Master Plan Report, prepared by HDR Engineering Inc. and dated February 7, 2012.

Rail Operations Plan, prepared by HDR Engineering Inc. and dated November 9, 2012.

Oakland Army Base Rail and Track Design Basis Memorandum – 35%, prepared by HDR Engineering Inc. and dated April 15, 2013.

Oakland Army Base 65% Construction Documents, prepared by Oakland Global Infrastructure Design Team and dated July 1, 2013.

**SCHEDULE 3.1.1(b)**  
**CCIG Rights**

1. The exclusive right to provide service to the portion of the former Oakland Army Base owned by the City of Oakland and the Oakland Redevelopment Successor Agency pursuant to CCIG's affiliates' rights under (a) that certain Lease Development And Disposition Agreements, dated October 24, 2012 and (b) that certain Agreement Regarding Allocation of Rights and Responsibilities under the Oakland Army Base LDDA and Related Agreements.

**SCHEDULE 3.1.2(a)**  
**WOPR Rights**

- a. UP/BN Switching Agreement, as amended.
- b. Agreement related to the Wood Street BNSF business.

**SCHEDULE 3.1.2(a)**  
**WOPR Equipment**

[See attached]

**SCHEDULE 5.1.2**  
**APPROVED INITIAL BUSINESS PLAN**

[To be attached]



LLC-1

# Articles of Organization of a Limited Liability Company (LLC)

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A \$70 filing fee.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form or document.

**Important!** LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

201319910079

FILED

Secretary of State  
State of California

JUL 17 2013

This Space For Office Use Only

For questions about this form, go to [www.sos.ca.gov/business/be/filing-tips.htm](http://www.sos.ca.gov/business/be/filing-tips.htm).

## LLC Name

① Oakland Global Rail Enterprise, LLC

Proposed LLC Name

The name must end with: "LLC," "L.L.C.," "Limited Liability Company," "Limited Liability Co.," "Ltd. Liability Co." or "Ltd. Liability Company;" and may not include: "bank," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp.," "insurer," or "insurance company." For general entity name requirements and restrictions, go to [www.sos.ca.gov/business/be/name-availability.htm](http://www.sos.ca.gov/business/be/name-availability.htm).

## Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act.

## LLC Addresses

③ a. 300 Frank Ogawa Plaza, Suite 340 Oakland California 94612  
Initial Street Address of LLC City (no abbreviations) State Zip

b. Initial Mailing Address of LLC, if different from 3a City (no abbreviations) State Zip

**Service of Process** (List a California resident or an active 1505 corporation in California that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a 1505 corporation.)

④ a. Marc Stice

Agent's Name

b. 2201 Broadway, Suite 604 Oakland CA 94612  
Agent's Street Address (if agent is not a corporation) City (no abbreviations) State Zip

## Management (Check only one.)

⑤ The LLC will be managed by:

☐

One Manager

☐

More Than One Manager

☒

All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.

Organizer - Signature

Phil Tagami

Print your name here

Make check/money order payable to: Secretary of State

Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail

Secretary of State  
Business Entities, P.O. Box 944228  
Sacramento, CA 94244-2280

Drop-Off

Secretary of State  
1500 11th Street, 3rd Floor  
Sacramento, CA 95814

**State of California**  
**Secretary of State**

**CERTIFICATE OF STATUS**

ENTITY NAME: OAKLAND GLOBAL RAIL ENTERPRISE, LLC

FILE NUMBER: 201319910079  
FORMATION DATE: 07/17/2013  
TYPE: DOMESTIC LIMITED LIABILITY COMPANY  
JURISDICTION: CALIFORNIA  
STATUS: ACTIVE (GOOD STANDING)

I, ALEX PADILLA, Secretary of State of the State of California,  
hereby certify:

The records of this office indicate the entity is authorized to  
exercise all of its powers, rights and privileges in the State of  
California.

No information is available from this office regarding the financial  
condition, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this  
certificate and affix the Great Seal  
of the State of California this day of  
February 13, 2018.

A handwritten signature in black ink, appearing to read "Alex Padilla".

ALEX PADILLA  
Secretary of State

MMS

OGRE PROJECT BUDGET SUMMARY

2/13/2018

|                                 |                  |
|---------------------------------|------------------|
| OGRE PROJECT BUDGET             | \$ 11,411,292.81 |
| OGRE PROJECT SPEND TO DATE      | \$ 3,815,442.94  |
| OGRE PROJECT BUDGET & REMAINING | \$ 7,594,511.33  |
| OGRE PROJECT PENDING INVOICES   | \$ 519,688.90    |
| OGRE PROJECT BUDGET TOTAL       | \$ 1,338.55      |

|                  |                                        |
|------------------|----------------------------------------|
| BUDGET INCREASES | \$1,000,000 Contingency Budget Created |
| 1 25 17          |                                        |

| CATEGORY                                                       |                                                              | ORIGINAL BUDGET  | ENCUMBERED      | CURRENT BUDGET   | SPEND TO DATE   | RETENTION TO DATE | BUDGET REMAINING | PENDING CHARGE | PENDING BUDGET  | PENDING INVOICES | PENDING BUDGET  |
|----------------------------------------------------------------|--------------------------------------------------------------|------------------|-----------------|------------------|-----------------|-------------------|------------------|----------------|-----------------|------------------|-----------------|
|                                                                |                                                              | AMOUNT           | ORDERS          |                  |                 |                   |                  | ORDERS         |                 | & P's            | REMAINING       |
| E. of W. BURMA TRACK CONSTRUCTION MATERIALS                    |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 001                                                            | GR / Mobilization                                            | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 002                                                            | Narisco Steel Rail Ties                                      | 416,101.92       | -               | 416,101.92       | 380,001.75      | -                 | 36,100.17        | -              | 36,100.17       | -                | 36,100.17       |
| 003                                                            | A&K Railroad Materials                                       | 1,023,852.44     | 21.93           | 1,023,874.37     | 1,023,874.37    | -                 | -                | -              | -               | -                | -               |
| 004                                                            | Stella Jones Materials                                       | 311,616.85       | -               | 311,616.85       | 208,352.00      | -                 | 103,264.85       | -              | 103,264.85      | 98,820.20        | 4,344.65        |
| 006                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| RACK CONS E. of W. BURMA TRACK CONSTRUCTION MATERIALS SUBTOTAL |                                                              | \$ 1,751,571.21  | \$ 21.93        | \$ 1,751,593.14  | \$ 1,612,228.12 | \$ -              | \$ 139,365.02    | \$ -           | \$ 139,365.02   | \$ 98,820.20     | \$ 40,494.82    |
| E. of W. BURMA TRACK CONSTRUCTION LABOR                        |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 007                                                            | Holland Company Welding                                      | \$ 174,367.00    | -               | 174,367.00       | 174,367.00      | -                 | -                | -              | -               | -                | -               |
| 008                                                            | Track - Construction                                         | \$ 1,185,228.00  | -               | 1,185,228.00     | 157,982.11      | -                 | 1,027,245.89     | -              | 1,027,245.89    | -                | 1,027,245.89    |
| 009                                                            | Track - Turnout Construction                                 | \$ 368,534.00    | -               | 368,534.00       | -               | -                 | 368,534.00       | -              | 368,534.00      | -                | 368,534.00      |
| 010                                                            | Track - Caltrans Guard Rail System                           | \$ 20,379.00     | -               | 20,379.00        | -               | -                 | 20,379.00        | -              | 20,379.00       | -                | 20,379.00       |
| 012                                                            | Misc. Other T&M                                              | -                | 45,811.24       | 45,811.24        | 44,472.69       | 1,338.55          | -                | -              | -               | -                | -               |
| 013                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| E. of W. BURMA TRACK CONSTRUCTION LABOR SUBTOTAL               |                                                              | \$ 1,748,508.00  | \$ 45,811.24    | \$ 1,794,319.24  | \$ 376,821.80   | \$ 1,338.55       | \$ 1,416,158.89  | \$ -           | \$ 1,416,158.89 | \$ -             | \$ 1,416,158.89 |
| V/LOCO CON CGW, MH1 and RIP/LOCO CONSTRUCTION & LABOR          |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 011                                                            | Track Removal T&M                                            | \$ 92,840.00     | -               | 92,840.00        | 44,083.00       | -                 | 48,757.00        | -              | 48,757.00       | -                | 48,757.00       |
| 014                                                            | Ind. Drill No. R & W Burma Rail Crossing                     | 257,664.00       | -               | 257,664.00       | -               | -                 | 257,664.00       | -              | 257,664.00      | -                | 257,664.00      |
| 015                                                            | Signal Work Estimate                                         | 75,000.00        | -               | 75,000.00        | -               | -                 | 75,000.00        | -              | 75,000.00       | -                | 75,000.00       |
| 016                                                            | Ind. No. 2 ASB Spurs, Lump Sum (\$276,532) [CCIG OG EXPENSE] | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 017                                                            | Rip / Loco Track, Lump Sum (\$143,720) [CCIG OG EXPENSE]     | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 018                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 019                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| LOCO CONS CGW, MH1 & RIP/LOCO CONSTRUCTION & LABOR SUBTOTAL    |                                                              | \$ 425,504.00    | \$ -            | \$ 425,504.00    | \$ 44,083.00    | \$ -              | \$ 381,421.00    | \$ -           | \$ 381,421.00   | \$ -             | \$ 381,421.00   |
| W. of W. BURMA TRACK CONSTRUCTION MATERIALS                    |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 020                                                            | W. of W. Burma Materials Lump Sum Estimate                   | 3,709,908.00     | -               | 3,709,908.00     | 290,980.00      | -                 | 3,412,928.00     | -              | 3,412,928.00    | -                | 3,412,928.00    |
| 021                                                            | Progress Rail Services                                       | -                | -               | -                | -               | -                 | -                | -              | -               | 420,818.70       | (420,818.70)    |
| 022                                                            | Morrow Meadows WGW Rail Lighting Conduit Installation        | -                | 212,820.00      | 212,820.00       | 88,489.00       | -                 | 124,331.00       | -              | 124,331.00      | -                | 124,331.00      |
| 023                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 024                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 025                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| RACK CONS W. of W. BURMA TRACK CONSTRUCTION MATERIALS SUBTOTAL |                                                              | \$ 3,709,908.00  | \$ 212,820.00   | \$ 3,922,728.00  | \$ 385,469.00   | \$ -              | \$ 3,537,259.00  | \$ -           | \$ 3,537,259.00 | \$ 420,818.70    | \$ 3,116,440.30 |
| W. of W. BURMA TRACK CONSTRUCTION LABOR                        |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 026                                                            | W. of W. Burma Labor Lump Sum Estimate                       | 2,430,792.00     | -               | 2,430,792.00     | 58,287.44       | -                 | 2,372,504.56     | -              | 2,372,504.56    | -                | 2,372,504.56    |
| 027                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 028                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 029                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 030                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 031                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| RACK CONS W. of W. BURMA TRACK CONSTRUCTION LABOR SUBTOTAL     |                                                              | \$ 2,430,792.00  | \$ -            | \$ 2,430,792.00  | \$ 58,287.44    | \$ -              | \$ 2,372,504.56  | \$ -           | \$ 2,372,504.56 | \$ -             | \$ 2,372,504.56 |
| EQUIPMENT                                                      |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 032                                                            | Rail Car for Moving Equipment                                | 115,000.00       | -               | 115,000.00       | 115,000.00      | -                 | -                | -              | -               | -                | -               |
| 033                                                            | OGRE Vehicle                                                 | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 034                                                            | Locomotive Painting                                          | -                | 17,312.00       | 17,312.00        | 17,312.00       | -                 | -                | -              | -               | -                | -               |
| 035                                                            | Locomotive Maintenance                                       | -                | 14,556.21       | 14,556.21        | 14,556.21       | -                 | -                | -              | -               | -                | -               |
| 041                                                            | Industrial Railways Company                                  | -                | -               | -                | 384,151.41      | -                 | (384,151.41)     | -              | (384,151.41)    | -                | (384,151.41)    |
| 043                                                            |                                                              | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| TOTAL EQUIPMENT SUBTOTAL                                       |                                                              | \$ 115,000.00    | \$ 31,868.21    | \$ 146,868.21    | \$ 531,019.62   | \$ -              | \$ (384,151.41)  | \$ -           | \$ (384,151.41) | \$ -             | \$ (384,151.41) |
| SOFT COSTS                                                     |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| 043                                                            | Capital Pursuit Costs                                        | 72,108.60        | -               | 72,108.60        | 72,108.60       | -                 | -                | -              | -               | -                | -               |
| 044                                                            | Consulting Costs                                             | -                | 2,400.00        | 2,400.00         | 2,400.00        | -                 | -                | -              | -               | -                | -               |
| 045                                                            | Loan Payments                                                | -                | 223,179.49      | 223,179.49       | 223,179.49      | -                 | -                | -              | -               | -                | -               |
| 046                                                            | Marketing                                                    | -                | 11,764.06       | 11,764.06        | 11,764.06       | -                 | -                | -              | -               | -                | -               |
| 047                                                            | HDR                                                          | 90,107.00        | -               | 90,107.00        | 86,790.56       | -                 | 3,376.44         | -              | 3,376.44        | -                | 3,376.44        |
| 048                                                            | Estimated Engineering Costs for 4th Rail Crossing            | 67,794.00        | -               | 67,794.00        | -               | -                 | 67,794.00        | -              | 67,794.00       | -                | 67,794.00       |
| 049                                                            | Permit Fees                                                  | -                | 968.33          | 968.33           | 1,936.66        | -                 | (968.33)         | -              | (968.33)        | -                | (968.33)        |
| 050                                                            | Reimbursable Expenses                                        | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 051                                                            | Office Setup Expense                                         | -                | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 052                                                            | Legal Fees                                                   | -                | 126,240.01      | 126,240.01       | 126,240.01      | -                 | -                | -              | -               | -                | -               |
| 053                                                            | Accounting                                                   | -                | 11,530.00       | 11,530.00        | 11,530.00       | -                 | -                | -              | -               | -                | -               |
| 054                                                            | Morrow Meadows WGW Rail Lighting System Design               | -                | 72,703.15       | 72,703.15        | 72,703.14       | (0.00)            | 0.01             | -              | 0.01            | -                | 0.01            |
| 055                                                            | Lease Takedown Fees                                          | -                | 190,743.93      | 190,743.93       | 190,743.93      | -                 | -                | -              | -               | -                | -               |
| 056                                                            | AD Rail Coordination                                         | -                | 28,000.00       | 28,000.00        | 8,197.50        | -                 | 19,802.50        | -              | 19,802.50       | -                | 19,802.50       |
| 057                                                            | Rusty Spike Rail Services                                    | -                | 20,000.00       | 20,000.00        | -               | -                 | 20,000.00        | -              | 20,000.00       | -                | 20,000.00       |
| 058                                                            | BKF                                                          | 48,500.00        | -               | -                | -               | -                 | -                | -              | -               | -                | -               |
| 100                                                            | Contingency                                                  | 1,000,000.00     | (978,050.35)    | 21,949.65        | -               | -                 | 21,949.65        | -              | 21,949.65       | -                | 21,949.65       |
| TOTAL SOFT COSTS SUBTOTAL                                      |                                                              | \$ 1,278,509.60  | \$ (290,521.38) | \$ 939,488.22    | \$ 807,533.96   | \$ (0.00)         | \$ 131,954.22    | \$ -           | \$ 131,954.22   | \$ -             | \$ 131,954.22   |
| DEVELOPER FEE                                                  |                                                              |                  |                 |                  |                 |                   |                  |                |                 |                  |                 |
| TOTAL                                                          |                                                              | \$ 11,459,792.81 | \$ (0.00)       | \$ 11,411,292.81 | \$ 3,815,442.94 | \$ 1,338.55       | \$ 7,594,511.33  | \$ -           | \$ 7,594,511.33 | \$ 519,688.90    | \$ 1,074,822.43 |

CAPITAL EX. Budget Summary

# OAKLAND GLOBAL RAIL ENTERPRISE



## Operations Overview

Oakland Global Rail Enterprise  
300 Frank H. Ogawa Plaza, Suite 340  
Oakland, CA 94612

Contact:  
Mark McClure, President  
[mmcclure@ogrejv.com](mailto:mmcclure@ogrejv.com)  
510.463.6338



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Original Master Plan from 2008

**OAKLAND GLOBAL - OGRE:** The former Oakland Army Base (OAB) property, the Oakland Global Project, consists of approximately 366 acres of contiguous land of which 172 acres are controlled by the City of Oakland and 194 acres by the Port of Oakland.

Beginning in 2008, the City, Port, and their selected development partners codified and commenced work on “Oakland Global”, a bold vision to revitalize Oakland’s working waterfront through the creation of a trade and logistics cluster. Phase 1 of the Oakland Global project includes site preparation, infrastructure modernization, rail network expansion, development of rail-served trade and logistics facilities, and development of a multi-commodity bulk marine terminal.

California Capital & Investment Group (CCIG), managing member of Oakland Global Rail Enterprise (OGRE), was selected by the City of Oakland as the Master Developer for the Phase I infrastructure of Oakland Global. CCIG also holds and has executed exclusive 66 year lease rights to the West Gateway (Q1 2016), Rail Right of Way (Q1 2016), and MH1 parcel area (Q4 2016).

Through the Rail Right of Way lease, OGRE has the operating rights over 15 miles of track and will provide both rail and railcar unloading services to a new 7+ million metric ton annual capacity bulk commodities terminal as well as service to 1.3 million square feet of new warehouse development (Prologis controls 1.2 m square feet). Additionally, OGRE holds the Burlington Northern Sante Fe (BNSF) and Union Pacific Railroad (UPRR) switching rights through its partner, West Oakland Pacific Railroad (WOPR), for current operations at the Port's rail yard, and is negotiating a 10 year Operating Agreement plus options with the Port of Oakland to be the exclusive rail operator for the Port's new \$100.9 million unit train storage and manifest rail facility.

OGRE's equipment assets are valued at \$1,500,000, with plans to acquire additional equipment when operations commence. As of November 2016, OGRE has funded approximately \$3.1 million of its \$10.6 million capital requirement to build the four miles of track and related rail infrastructure on the City controlled portion of the property, which when completed, will secure usage of +50% of the Port's support yard as well as first call / first serve basis of the manifest yard.



Oakland Global Rail Enterprise, LLC (OGRE) is a newly created short line railroad company that is currently operating in Oakland at the former Oakland Army Base. OGRE anticipates Class III status with the Surface Transportation Board, and is recognized by the FRA as a system rail carrier. OGRE is comprised of two Oakland-based and Port of Oakland certified local businesses -- West Oakland Pacific Railroad 30% (WOPR) and California Capital & Investment Group 70% (CCIG).

WOPR runs two locomotives and provides regular five day per week service on the former OTR tracks and on new Port of Oakland tracks with switching available 24/7 as needed. The sole managing member of WOPR is Industrial Railway Company, which is the oldest continually-operating railroad construction contractor in existence throughout Northern California and Nevada. WOPR is a completely FRA compliant rail operator with FRA approved safety and training programs, and WOPR also maintains its own tracks and equipment.

CCIG is a leading East Bay full service commercial real estate company specializing in brokerage, asset management, property management, development, lending and consulting. CCIG has brokered the sale and lease of millions of square feet of office, industrial and retail properties throughout the Bay Area with combined transaction values exceeding \$1 billion, in addition to underwriting and redeveloping several iconic Bay Area historic properties. CCIG is currently under contract with the City of Oakland for the master development, property management, and construction management of infrastructure and site improvements on the City-controlled portion of the former Oakland Army Base.

**Mark McClure, OGRE President**

Mark McClure is a California licensed general contractor and partner at CCIG, specializing in land use, entitlements, and permitting for Bay Area residential and commercial development. Mr. McClure has served the public both in appointed positions and on various public boards and community organizations of personal interest including the Oakland Planning Commission, Port Board of Commissioners and San Francisco Bay Conservation and Development Commission.

**Chris Stotka, OGRE Director of Rail Operations**

Chris Stotka is the owner of WOPR and managing partner of Industrial Railways Company and offers extensive experience in all phases of railroad track design, construction, maintenance, removal, inspection, and transloading. He belongs to a Preferred Transloader with both Class I railroads and is member of TDA, CSLA, PNWARS, and Grain Association for California.

**Jake Studer, OGRE General Manager**

Previous to joining OGRE as General Manager, Studer was San Francisco Bay Railroad's Rail Operations Manager for close to five years, managing the Class III short-line and handling all aspects of the operation including corporate meetings, FRA compliance, training rail crews and conducting mechanical repairs as well as the Assistant Manager at NWP Railroad. He also brings an additional 5 years of professional business experience from small business and corporate settings including accounting, purchasing, logistics, compliance and training.

The OGRE Advisory Board is a five member body (three members to be determined) of select rail, transportation, and logistics development professionals who provide best practice recommendations, industry insight, and informed guidance to OGRE's operation and management.



**Phil Tagami, Chairman of the Board**

President and CEO of California Capital & Investment Group, Inc.

For the past 25 years, he has served as a developer and a development consultant on numerous projects representing millions of dollars of rehabilitation and new construction. Several projects have required multiple finance sources including the use of tax credits and grants. Mr. Tagami has built teams for many of these projects, demonstrating a detailed understanding of the interdisciplinary coordination required for complex infrastructure projects, urban infill restoration and new construction.

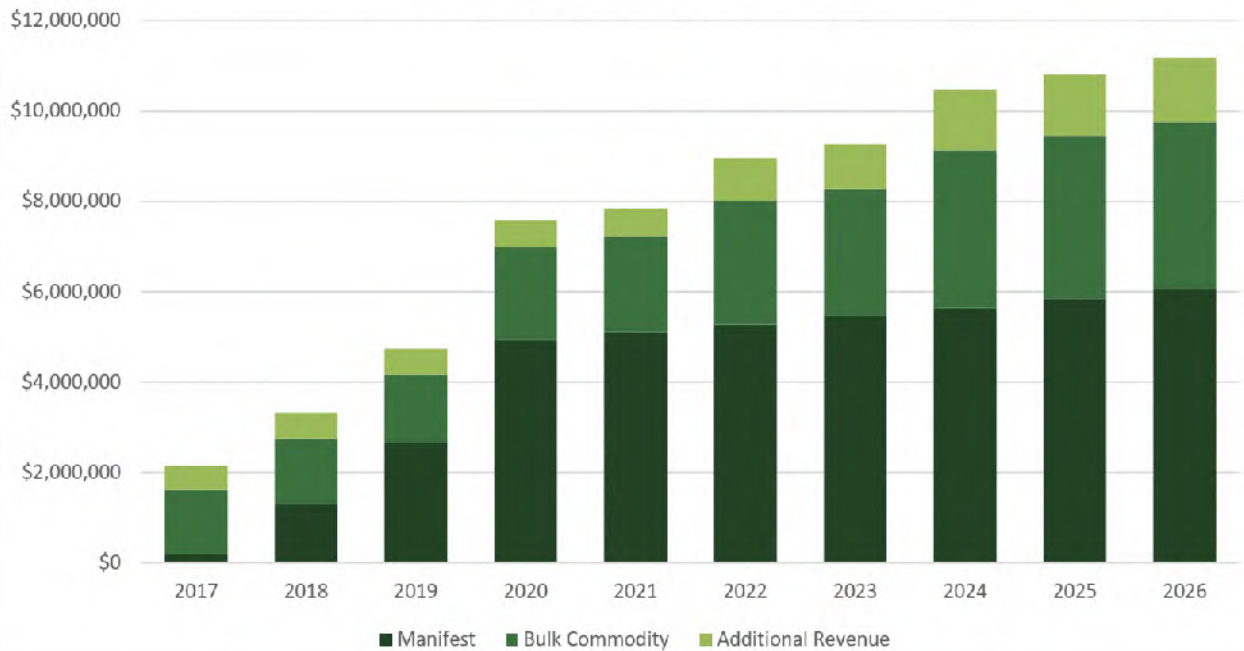
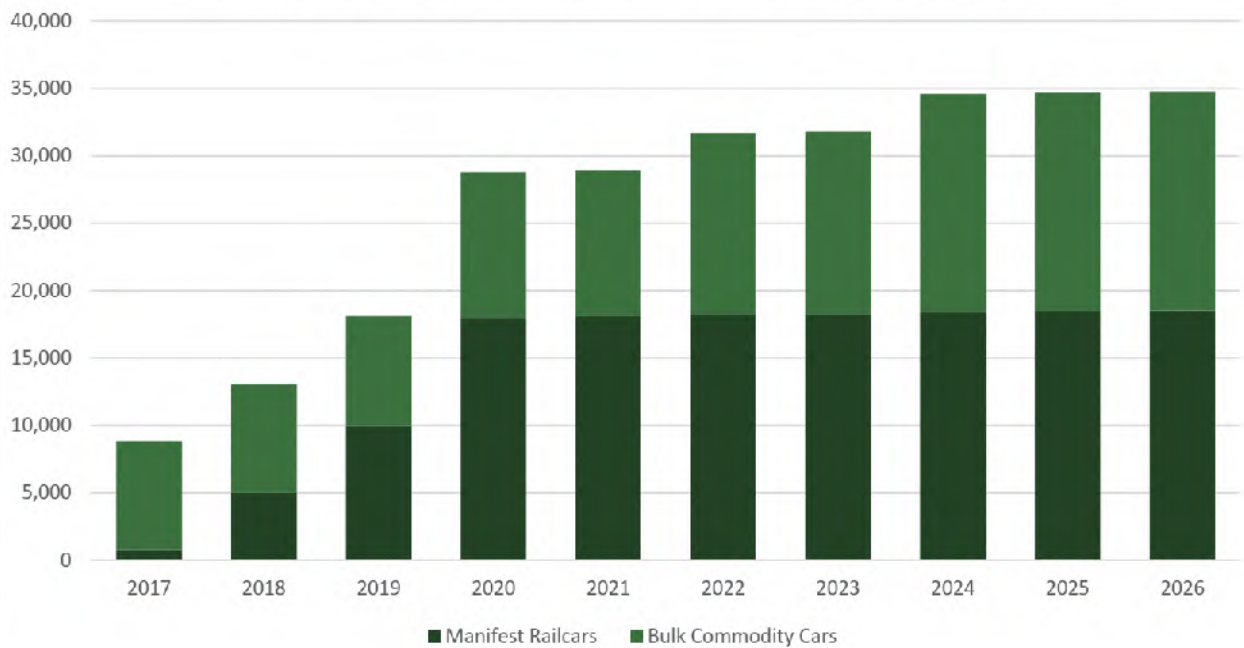


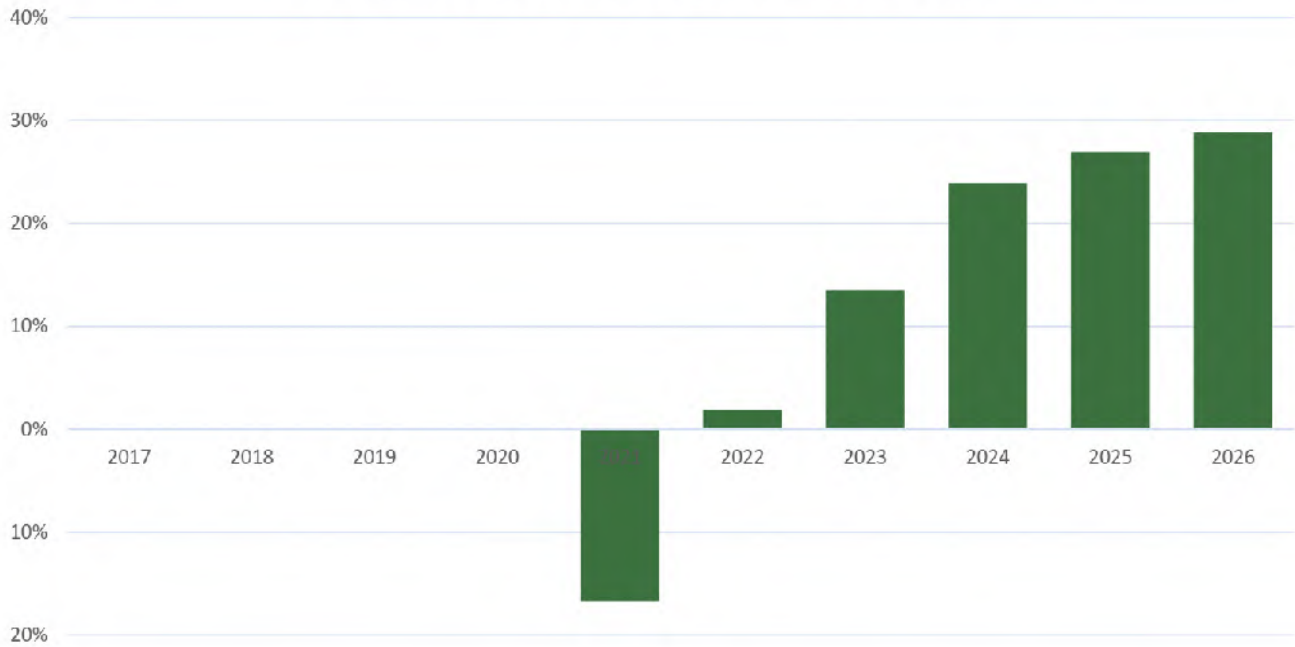
**Kern Schumacher, Board Member**

Chairman and Director of A & K Railroad Materials, Inc.

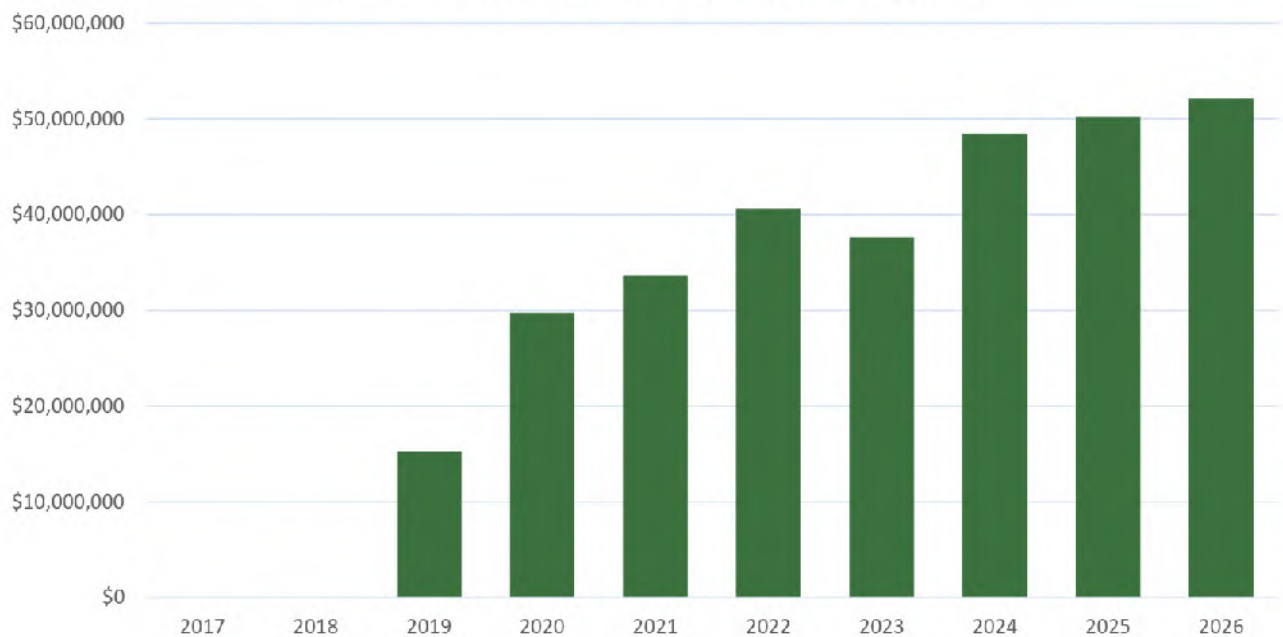
A lifetime entrepreneur, Mr. Schumacher co-founded A&K Railroad Materials when he was 19 years old. Today, A&K is one of the leading suppliers of new and used track materials, with a network of storage and distribution centers around the country.

## **Three Additional Board Positions To Be Determined**

**OGRE 10-YEAR PROJECTED REVENUE****PROJECTED ANNUAL NUMBER OF MANIFEST AND BULK RAILCARS**

**OGRE IRR AFTER 5-YEAR STABILIZATION PERIOD****OGRE VALUE (INDUSTRY STANDARD EBITDA 8.6x\*)**

\*Cognient.com Q4 2016 Valuation Multiples Update, Transportation

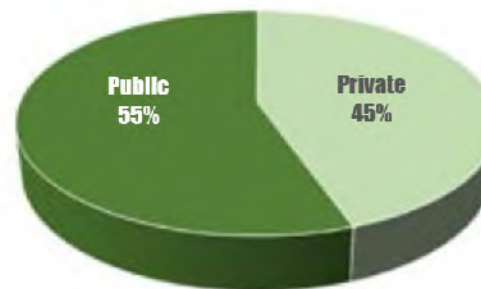


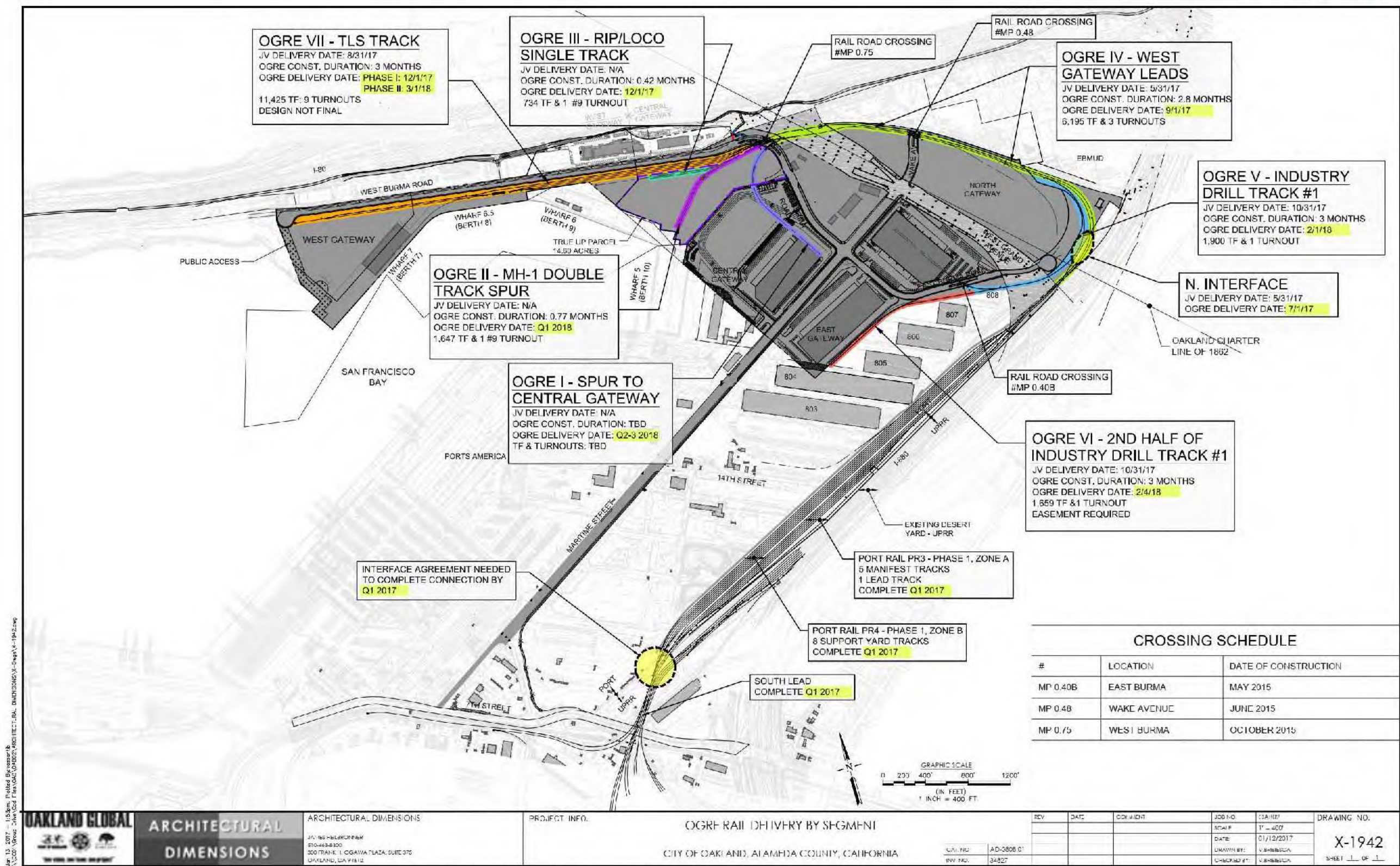
## Phase 1 Funding

| Development Elements    | Proposed Revised Total Cost (in \$ millions) | TBD          | OBTOT       |              | PROLOGIS     | ALAMEDA     | CASS        |             |             | OGRE        | PORT OF OAKLAND | USDOT TIGER |
|-------------------------|----------------------------------------------|--------------|-------------|--------------|--------------|-------------|-------------|-------------|-------------|-------------|-----------------|-------------|
| Remediation             | 11.4                                         | -            | -           | -            | -            | -           | -           | 5.7         | -           | -           | 5.7             | -           |
| Rail Manifest Yard      | 79.6                                         | -            | -           | 65.8         | -            | -           | -           | 3.8         | -           | -           | 10.0            | -           |
| City Site Prep/Infrast. | 254.4                                        | -            | -           | 176.3        | -            | 41.0        | -           | 37.1        | -           | -           | -               | -           |
| Recycling Facilities    | 46.6                                         | -            | -           | -            | -            | -           | 46.6        | -           | -           | -           | -               | -           |
| City Trade & Logistics  | 110.0                                        | -            | 10.6        | -            | 79.5         | -           | -           | -           | 9.3         | 10.6        | -               | -           |
| Marine Facilities*      | 178.2                                        | 140.9        | 15.3        | -            | -            | 22.0        | -           | -           | -           | -           | -               | -           |
| Unit Train Support Yard | 21.3                                         | -            | -           | -            | -            | -           | -           | -           | -           | -           | 6.3             | 15.0        |
| <b>TOTAL</b>            | <b>701.5</b>                                 | <b>140.9</b> | <b>25.9</b> | <b>242.1</b> | <b>79.5</b>  | <b>63.0</b> | <b>46.6</b> | <b>46.6</b> | <b>9.3</b>  | <b>10.6</b> | <b>22.0</b>     | <b>15.0</b> |
| <b>PERCENTAGES</b>      | <b>100%</b>                                  | <b>20%</b>   | <b>3.7%</b> | <b>34.5%</b> | <b>11.3%</b> | <b>9.0%</b> | <b>6.6%</b> | <b>6.6%</b> | <b>1.3%</b> | <b>1.5%</b> | <b>3.1%</b>     | <b>2.1%</b> |

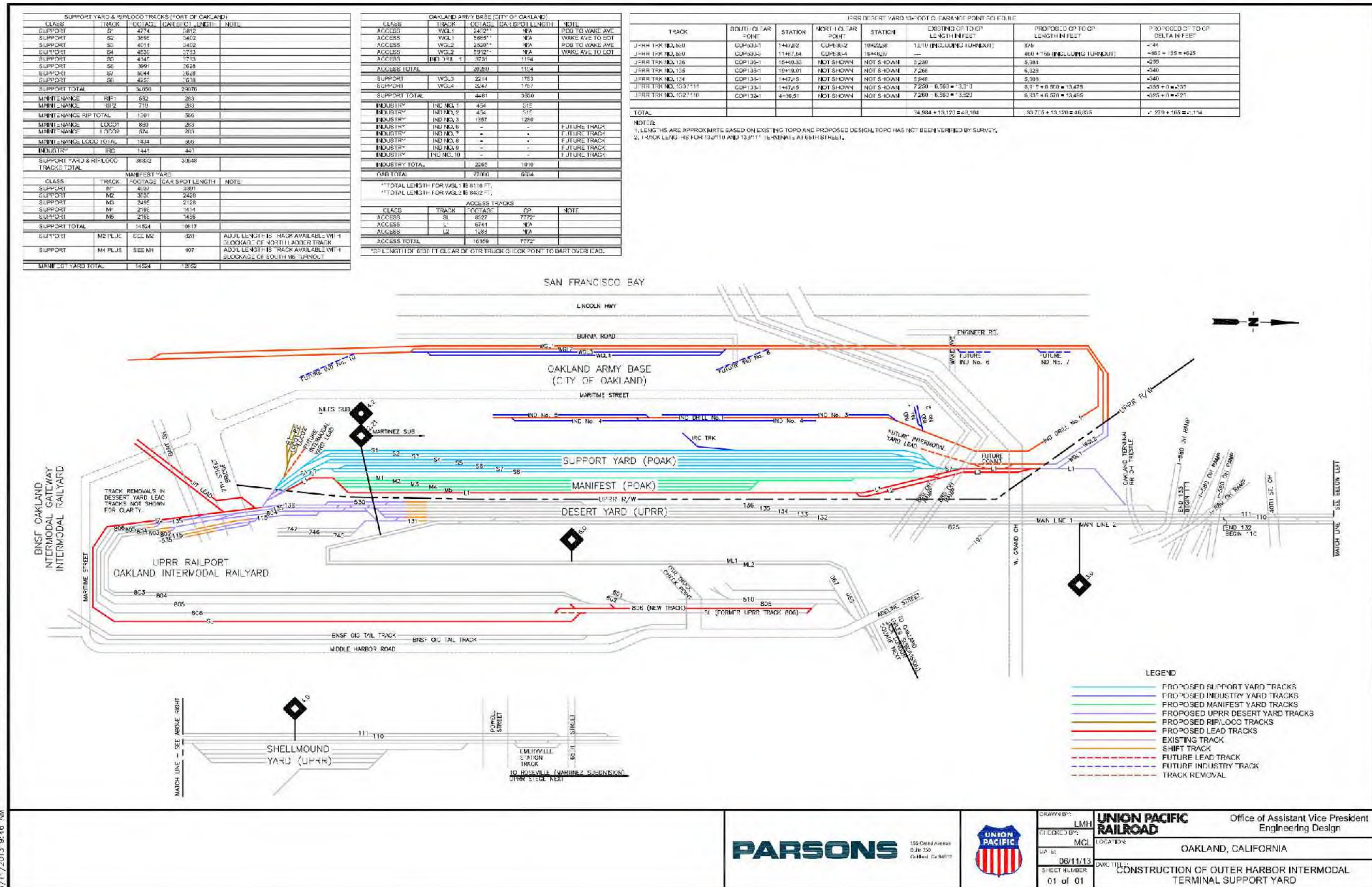
\*Note: Marine Facilities budget based on single commodity concept

**OAB Phase I Funding**  
(as of January 2017)





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6/11/2013 9:16 AM



**CITY OF OAKLAND**

Lease Disposition & Development Agreement

Rail Access Agreement

Rail Service Agreement

**CLASS I RAILROADS**

Industry Track Agreement with Union Pacific & Burlington Northern Sante Fe

Handling Carrier Agreement with Union Pacific and Burlington Northern Sante Fe

OTR Switching Services Agreement with Union Pacific and Burlington Northern Sante Fe

**PORT OF OAKLAND**

Rail Access Agreement

Rail Operating Agreement

**OAKLAND GLOBAL TENANTS & ADJACENT PROPERTY TENANTS**

Oakland Global Bulk and Oversized Terminal (OBOT)

Prologis Service Agreement

North Gateway Tenants Service Agreements / CWS / CASS

EBMUD Tenant Viridis Fuels

Pinacle Agricultural Services

Impact Transportation, LLC

Port Transfer Incorporated

**SURFACE TRANSPORTATION BOARD CLASS III CERTIFICATION**

**ATTACHMENT 3**

**Form of Non-Disturbance Agreement**

[See Attached]

## NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (“**Agreement**”), dated as of \_\_\_\_\_, 2018 (the “**Effective Date**”), is entered into by and among the City of Oakland, a municipal corporation, (hereinafter called “**Master Landlord**”), Oakland Bulk and Oversized Terminal, LLC, a California limited liability company (hereinafter called “**Tenant**”), and Oakland Global Rail Enterprise, LLC, a California limited liability company (hereinafter called “**Subtenant**”).

### WITNESSETH:

**WHEREAS**, Master Landlord and Tenant have entered into that certain Army Base Redevelopment Project Ground Lease, dated as of February 16, 2016 (the “**Master Lease**”), which Master Lease is attached hereto as **Exhibit 1** hereto and includes certain rights and obligations with respect to the property described in the Master Lease as the Premises (the “**Premises**”);

**WHEREAS**, Tenant and Subtenant have entered into that certain Sublease Agreement (WGW Rail), dated as of June 26, 2018 (the “**Sublease**”), which Sublease is attached hereto as **Exhibit 2** hereto and includes certain rights and obligations with respect to a portion the Premises further described in the Sublease (the “**Sublease Premises**”);

**WHEREAS**, Subtenant desires to be assured of continued occupancy of the Sublease Premises under the terms of the Sublease; and

**WHEREAS**, this Agreement is entered into pursuant to Section 12.5 of the Master Lease.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Non-Disturbance: New Lease. In the event the Master Lease expires, terminates or is canceled and Master Landlord retakes possession of the Premises during the term of the Sublease, including but not limited to, due to a default by Tenant under the Master Lease (individually and collectively, the “**Master Lease Termination**”), subject to the terms of this Agreement:

(a) The Sublease shall not terminate as a result of the Master Lease Termination or for any reason;

(b) So long as Subtenant is not then in default, after applicable notice and grace periods under any of the terms, covenants, or conditions of the Sublease, Master Landlord hereby agrees not to affect or disturb Subtenant's right to possession of the Sublease Premises and any of Subtenant's other rights under the Sublease in the exercise of Master Landlord's rights under the Master Lease;

(c) Master Landlord and Subtenant hereby agree that the Sublease shall thereafter be deemed a direct lease between Master Landlord and Subtenant; and

(d) As soon as reasonably possible, Master Landlord and Subtenant agree to prepare and execute a new direct lease, on substantially the same terms and conditions as those set forth in the Sublease for the remainder of the Sublease term (the "**New Lease**"), at which point the Sublease shall automatically terminate.

2. Limitation on Landlord's Liability under Sublease or New Lease. In the event of a Master Lease Termination, Master Landlord shall not:

(a) Be liable to Subtenant for any act, omission or breach of the Sublease by Tenant; provided, however, the foregoing shall not excuse Master Landlord's default under the Sublease or New Lease (i) for continuing matters that first arose prior to the Master Lease Termination, but only to the extent occurring after the Master Lease Termination and (ii) for matters that first arise after the Master Lease Termination;

(b) Be subject to any offsets or defenses which Subtenant might have against Tenant; provided, however, the foregoing shall not prevent any offsets or defenses under the Sublease or New Lease that (i) continue or arise after the Master Lease Termination and (ii) are permitted under the terms of the Master Lease (provided that offsets and defenses against Master Landlord for continuing matters that first arose prior to the Master Lease Termination shall be limited to the extent occurring after the Master Lease Termination); or

(c) Be liable to Subtenant for any security deposit or prepaid rent previously paid by Subtenant to Tenant unless such deposits are actually transferred to Master Landlord, except for rent for the current month, if previously paid.

2. Attornment. Subject to the provisions of Section 1, above, Subtenant hereby agrees to attorn to Master Landlord.

3. Subtenant Estoppel. Subtenant hereby agrees:

3.1 That the Sublease, including all amendments, is attached hereto as Exhibit 2 and is unmodified, except for such attached amendments, and to Subtenant's actual knowledge is in full force and effect, as so amended;

3.2 Concurrently herewith, Subtenant has paid the following amounts to Tenant as "Rent" under the Sublease: None.

3.3 To Subtenant's actual knowledge, that Subtenant is not aware of any defaults under the Sublease which have not been cured, except as follows: (in none, insert "None"): None.

4. Continued Effect of Master Lease. As between Master Landlord and Tenant, the Sublease shall not alter, amend or otherwise modify any provisions of the Master Lease. This Agreement shall not release or discharge Tenant of any of its obligations under the Master Lease or release, discharge or alter the primary liability of Tenant to pay rent and all other sums due under the Master Lease and to perform and comply with all other obligations of Tenant under the Master Lease. Subtenant shall not violate any of the terms and conditions of the Master Lease to the extent applicable to the use and occupancy of the Sublease Premises. Subject to the terms of Section 1, above, any breach of the Master Lease by Tenant or any breach of the Sublease by Subtenant which results in a breach of the Master Lease shall entitle Master Landlord to all the rights and remedies provided in the Master Lease.

5. Term of Master Lease and Sublease. Subtenant acknowledges and agrees that, subject to the provisions of this Agreement including without limitation Section 2 above, the term of the Sublease shall terminate upon the termination of the Master Lease and execution and delivery of the New Lease.

6. Memorandum. Tenant shall record a memorandum of this Agreement in the form attached hereto as Exhibit 3 in the Official Records of Alameda County.

7. Entire Agreement; Successors. This Agreement contains the entire agreement between the parties hereto regarding the matters which are the subject of this Agreement. In the event of a permitted assignment under the Master Lease by Master Landlord or Tenant of its interest in the Master Lease with respect to all or a portion of the Sublease Premises, then the assignee of either Master Landlord or Tenant, as applicable, shall automatically be deemed the assignee of Master Landlord or Tenant, as applicable, under this Agreement, and such assignee shall automatically assume and be subject to all the terms herein and the obligations of Master Landlord or Tenant, as applicable, under this Agreement. No other assignments of this Agreement shall be permitted, except with the written consent of all parties hereto. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall apply to and bind the heirs, successors, the executors and administrators and permitted assigns of all the parties hereto. The parties acknowledge and agree that no rule or construction, to the effect that any ambiguities are to be resolved against the drafting party, shall be employed in the interpretation of this Agreement. If any provision of this Agreement is determined to be illegal or unenforceable, such determination shall not affect any other provisions of this Agreement, and all such other provisions shall remain in full force and effect.

8. Counterparts. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such

counterparts together shall constitute but one agreement.

9. Brokerage Commissions. Tenant and Subtenant covenant and agree that under no circumstances shall Master Landlord be liable for any brokerage commission or other charge or expense in connection with the Sublease or this Agreement and Tenant and Subtenant agree to protect, defend, indemnify and hold Master Landlord harmless from the same and from any cost or expense (including but not limited to attorneys' fees) incurred by Landlord in resisting any claim for any such brokerage commission.

10. Attorneys' Fees. In the event of any litigation between the parties hereunder to enforce or interpret this Agreement, the prevailing party (whether after trial or appeal) shall be entitled to recover from the party not prevailing its reasonable attorneys' fees and costs, in addition to all other proper relief.

11. Governing Law. This Agreement and the rights and obligations of the parties hereto are governed by the laws of the State of California.

[Rest of Page Left Blank]

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the Effective Date.

**MASTER LANDLORD:**

**City of Oakland,**  
a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_  
\_\_\_\_\_

Approved as to form and legality this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
City Attorney

**TENANT:**

**OAKLAND BULK AND OVERSIZED  
TERMINAL, LLC**, a California limited  
liability company

By: \_\_\_\_\_  
Phil Tagami  
Authorized Signatory

**SUBTENANT:**

**OAKLAND GLOBAL RAIL  
ENTERPRISE, LLC**, a California limited  
liability company

By: \_\_\_\_\_  
Mark McClure  
Manager

**EXHIBIT 1**  
**MASTER LEASE**

**[Attached]**

**EXHIBIT 2**  
**SUBLEASE**

[Attached]

**EXHIBIT 3**  
**MEMORANDUM OF AGREEMENT**  
**[Attached]**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

The City of Oakland  
250 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 94612  
Reference: Oakland Army Base

With a copy to:

Oakland Bulk & Oversized Terminal, LLC  
300 Frank H. Ogawa Plaza, Ste. 340  
Oakland, CA 94612

(Space Above This Line For Recorder's Use Only)

**MEMORANDUM OF  
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This Memorandum of Non-Disturbance and Attornment Agreement (this "Memorandum"), dated as of \_\_\_\_\_, 2018, is entered into by and between the CITY OF OAKLAND, a municipal corporation ("Master Landlord"), Oakland Bulk and Oversized Terminal, LLC, a California limited liability company ("Tenant"), and Oakland Global Rail Enterprise, LLC, a California limited liability company ("Subtenant").

Master Landlord and Tenant have entered into that certain Army Base Gateway Redevelopment Project Ground Lease for West Gateway between Master Landlord and Tenant, dated February 16, 2016 (the "Master Lease"), whereby Master Landlord leased to Tenant, and Tenant leased from Master Landlord, that certain real property located in the City of Oakland as more particularly described in the Master Lease. A Memorandum of the Master Lease has been recorded in the Official Records of Alameda County as Document No. 2016-038036.

Tenant and Subtenant have entered into that certain Sublease Agreement (WGW Rail), dated December 15, 2016 (the "Sublease"), whereby Tenant subleased to Subtenant, and Subtenant leased from Tenant, that certain portion of the Master Lease premises located in the City of Oakland as more particularly described in Exhibit A attached hereto. A Memorandum of the Sublease has been recorded in the Official Records of Alameda County as Document No. \_\_\_\_\_.

Master Landlord, Tenant and Subtenant have entered into that certain Non-Disturbance and Attornment Agreement dated \_\_\_\_\_, 2018, with respect to the Master Lease and the Sublease (the "NDA"). All terms in this Memorandum that are not defined herein shall have the same meanings as set forth in the NDA.

This Memorandum incorporates herein in full, by this reference, all provisions of

the NDA. This Memorandum is solely for recording and notice purposes and in no way alters, amends, modifies or supplements the provisions of the Master Lease, Sublease or NDA. In the event of any conflict between any provision of the NDA and any provision of this Memorandum, the NDA shall control.

This Memorandum shall extend to and be binding upon the parties hereto and their legal representatives, heirs, successors, and assigns.

This Memorandum may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, Master Landlord, Tenant and Subtenant have executed this Memorandum as of the date first written above.

**MASTER LANDLORD:**

**City of Oakland,**  
a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_  
\_\_\_\_\_

Approved as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
City Attorney

**TENANT:**

**OAKLAND BULK AND OVERSIZED  
TERMINAL, LLC,** a California limited  
liability company

By: \_\_\_\_\_  
Phil Tagami  
Authorized Signatory

**SUBTENANT:**

**OAKLAND GLOBAL RAIL  
ENTERPRISE, LLC,** a California limited  
liability company

By: \_\_\_\_\_  
Mark McClure  
Manager

**EXHIBIT A  
TO  
MEMORANDUM**

**LEGAL DESCRIPTION OF REAL PROPERTY**

**[See attached]**

## **EXHIBIT B**

### **West and Middle Segment Historical Map**

