

BOARD MTG. DATE: 9/11/14

SUPPLEMENTAL AGENDA REPORT

TITLE	Lease Agreement with Union Pacific Railroad Company for up to Six Acres of Land at Roundhouse Property for a Term of up to 66 Years
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AMOUNT	\$0 <u>revenue</u> <u>\$350,000 capital improvement value</u>		
<input checked="" type="checkbox"/> REVENUE	<input checked="" type="checkbox"/> CAPITAL EXPENDITURE	<input type="checkbox"/> OPERATING EXPENSE	<input type="checkbox"/> NON-OPERATING EXPENSE
PARTIES INVOLVED	Union Pacific Railroad Company, Omaha, NE Jack Koraleski, CEO		
SUBMITTED BY	John C. Driscoll, Director of Maritime		
APPROVED BY	J. Christopher Lytle, Executive Director		

REQUESTED ACTION	ORDINANCE
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EXECUTIVE SUMMARY

The rail yard currently under construction at the former Oakland Army Base (OAB) will connect to the national freight railroad network via a new lead track to Union Pacific Railroad Company's (UP) mainline. The new lead track will be developed on UP property (the current UP rail terminal, Railport), adjacent to the Port's maritime area, and will be utilized by UP and BNSF Railway. As a result of the new lead track, approximately six acres of parking area inside Railport will be eliminated or restricted from use (see Exhibit A). To compensate for losing parking space, UP has required the Port to provide equivalent land elsewhere in the immediate vicinity of UP's intermodal rail terminal. Port staff proposes to enter into a 66-year lease with UP for Port property at no cost to UP, in exchange for the Port receiving railroad service rights on the new lead track to the new OAB rail yard pursuant to a future Industry Track Agreement. The lease is contingent upon UP achieving minimum intermodal cargo activity thresholds, and the Port continuing to require rail service to the new OAB rail yard.

~~Port staff will supplement this report with further information after the initial posting date.~~

<u>ADDITIONAL FINDINGS</u>	APPLIES	DOES NOT APPLY
MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)	X	
LIVING WAGE REGULATIONS	X	
GENERAL PLAN CONFORMITY	X	
OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)		X

BACKGROUND

On April 10, 2014, the Board authorized a Memorandum of Understanding with UP where the parties agreed in principle to develop the new rail yard, including the new lead track, and enter into the necessary agreements related to that rail yard being built on the former Oakland Army Base by the Port. The new lead track eliminates and impacts UP's current intermodal terminal parking along Middle Harbor Road. In executing the MOU, the Port committed to providing replacement parking space as a condition to entering the construction of the new lead track and corresponding operation of the new rail yard.

In addition to the Lease Agreement for which authorization is being requested in this Agenda Report, the Port and UP plan to enter into (a) an Industry Track Agreement that will permit rail service to the new rail yard; and (b) a Construction Reimbursement Agreement where the Port would reimburse UP for certain costs for the construction of the new lead track. Authorization for these two agreements will be subject to separate actions by the Board.

ANALYSIS

As described in the Memorandum of Understanding, the Port committed to provide equivalent land for parking space in or around the Port's nearby Roundhouse/Sherex property for UP's use via the proposed lease agreement. This area is provided as mitigation for UP's parking area which will be lost or restricted due to the south lead track construction and operation. The terms and conditions of the lease have been agreed to by both parties as shown in the attached draft lease agreement. Staff has identified approximately 6 acres of land between Matson Navigation at berth 63 and Schnitzer Steel. This land is referred to as the "Roundhouse/Sherex" property and is currently being used for truck parking by the Port's contractor, Ampco. Allocating approximately 6 acres of land from the site would leave approximately 34 acres of land for truck parking, transloading, or other uses.

Prior to leasing the property, the Port would be responsible for installing new perimeter fencing, delineating a new driveway to the site off Middle Harbor Road, modifying the lighting controls and other site work that may be necessary prior to UP's operation. The approximate cost for the necessary improvements prior to leasing is estimated to be up to \$350,000, which is budgeted within the 5-year capital needs assessment as part of the Oakland Army Base redevelopment. UP will be responsible for maintenance and operating costs within the lease area. UP has agreed that if its intermodal rail terminal activity levels fall below 125,000 containers moved per year, for 2 consecutive years, the lease would automatically be terminated.

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Staff have worked with UP to try to reduce the size, if not eliminate completely the need for this lease area. However, UP has stated unequivocally that it would not permit the proposed lead track without an equivalent exchange of land. The lead track negatively impacts UP's existing operations, and UP has required the Port to provide equivalent lease property, or else UP will not authorize the project.

The Port and UP continue to negotiate the exact location of their parking area with the Roundhouse area. One such site under consideration is shown in the attached map (Exhibit A). UP has agreed to allow the Port to relocate its 6-acre site to an alternate location within the Roundhouse if the initially proposed location is needed by the Port or a potential customer during the term. The Port would have the right to relocate no more frequently than once every 2 years, with the Port responsible for any relocation costs.

UP's use of this property will be limited to activities which support UP's intermodal business, and no other purpose. UP and the Port have aligned interests in increasing intermodal rail movement via Oakland. This lease may have an incremental benefit to the Port if UP were able to expand or improve its intermodal service capabilities, attracting new customers or more cargo through the Port of Oakland.

This lease agreement is contingent on UP building the lead track and providing the Port with service rights through a Construction Reimbursement Agreement and an Industry Track Agreement, respectively.

BUDGET & STAFFING

This lease agreement will generate no revenue for the Port, nor will the Port have any maintenance obligations during the term.

Funds for the \$350,000 associated improvements are included in the Capital Needs Assessment (CNA) as part of the Lead Track and Manifest Yard project within the Oakland Army Base program.

It is estimated that between \$1-3 million of Port tax-exempt bonds may require defeasance. A defeasance can be effected by (1) "converting" the Port's tax-exempt bonds to taxable bonds or (2) using Port cash to "buy-back" the bonds with a corresponding reduction in future debt service payments. The cost of the defeasance will be under method (1): the difference in interest rates paid by the Port, or under method (2): the opportunity cost of Port cash in comparison to the reduction in debt service under (2). The defeasance method cannot be determined until the exact amount of Port-tax exempt bonds requiring defeasance is known.

Entering into the proposed agreement(s) will have no impact on current staffing. The OAB redevelopment program includes staff from Maritime, Engineering, Finance and Social Responsibility Divisions, as well as consulting support.

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MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

To the extent any improvements performed by UP on the lease area require a Port permit and exceed \$150,000 over a 12-month period, those improvements will be subject to the Maritime and Aviation Project Labor Agreement (MAPLA).

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portoakland.com/pdf/about/strategicPlan2011-2015.pdf>).

- Goal A: Objective 4: Pursue strategic partnerships at all levels: local, regional, national and international

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the Living Wage Regulations) will apply to this lease agreement.

ENVIRONMENTAL

The proposal to authorize execution of a lease agreement with UP for 6 acres of truck parking on the Port's Roundhouse property is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the Port CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. The site under consideration is already used for truck parking, and that use will continue under this proposal.

Most of the 6-acre truck parking site is identified as undergoing evaluation by the State of California's Department of Toxic Substances Control (DTSC) (EnviroStor site 01730096) as follow-up to the 1987-1988 remediation of soil and groundwater from Sherex Chemical Company operations that ceased in the 1980's. In May 1997, the Alameda County Department of Environmental Health issued a Remedial Action Completion Certification and commented that no further action was required on the site.

GENERAL PLAN

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Pursuant to Section 727 of the City of Oakland Charter, this project has been determined to conform to the policies for the transportation designation of the Oakland General Plan.

**OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)
PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)**

The proposed action is not within the scope of the Port of Oakland's Owner Controlled Insurance Program.

OPTIONS

- Authorize a Lease Agreement with UP. This is the recommended option.
- Direct staff to negotiate different terms and conditions for the Lease Agreement. Direct staff to return to the Board at a later date, and direct staff to accommodate project delays;
- Do not authorize any further agreements with UP. This would result in the rail yard being incomplete and would not permit unit trains to serve customers on the former OAB, which will result in non-compliance with state and federal grant agreements, as well as significant limitation on future business opportunities at the former Oakland Army Base.

RECOMMENDATION

Adopt an Ordinance authorizing the Executive Director to enter into a \$0 rent Lease Agreement with Union Pacific Railroad Company for 66-years on an approximately 6-acre site in the Roundhouse area such as the site shown in the map provided as Exhibit A.

Exhibits
A: Map

REMAINING ACTION ITEMS Tab 6.1

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[Exhibit A: Map](#)



This map is a user-generated static output from an intranet map viewer, and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
 THIS MAP IS NOT TO BE USED FOR NAVIGATION

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BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A NO-RENT LEASE AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY FOR SIX ACRES OF LAND IN THE ROUNDHOUSE/SHEREX AREA FOR A TERM OF 66 YEARS IN EXCHANGE FOR THE DISPLACEMENT OF APPROXIMATELY SIX ACRES OF PARKING AND STORAGE USES ON UNION PACIFIC LANDS FOR THE NEW SOUTH LEAD TRACKS TO THE PORT'S NEW RAIL YARD IN THE OAKLAND ARMY BASE.

WHEREAS the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the proposed no-rent Lease Agreement with Union Pacific Railroad Company ("UP") for six acres of land in the Roundhouse/Sherex area for a term of 66 years to replace a comparable amount of land on UP property being displaced to accommodate the new South Lead tracks to the Port's new rail yard in the Oakland Army Base, as set forth in the Agenda Report for Agenda Item 6.1 dated September 11, 2014 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board hereby finds and determines as follows:

A. The proposal to execute a lease agreement or any project-related agreement with UP for constructing the lead track is part of the Phase 1 Rail Yard project at the former OAB. Project components such as this were previously reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port CEQA Guidelines.

B. In July 2002, the City of Oakland (City), as the lead agency under CEQA, certified an Environmental Impact Report (EIR) for reuse of the OAB. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In June 2012, the Board considered the 2012 OAB Project Initial Study/Addendum (2012 Addendum) and

adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP) with Resolution No. 12-76.

C. The OAB EIR and the 2012 Addendum described projects to be developed by the Port and City on and immediately adjacent to the former OAB, including rail improvements on non-Port property. Thus, no further CEQA review is required to take the actions recommended in this agenda report.

Section 3. The Board approves and authorizes the Executive Director to execute a no-rent Lease Agreement with Union Pacific Railroad Company for approximately six acres of land within the Roundhouse/Sherex area (all as depicted in the map attached hereto as Exhibit A) for a term of 66 years in exchange for the displacement of a comparable amount of land on UP property. The proposed Lease Agreement will have the following terms and conditions:

A. Premises: The Premises will be approximately six acres of paved and lighted contiguous land within the Roundhouse/Sherex area, which the Port will have the right to move anywhere within the Roundhouse/Sherex area so long as the Port provides at least 120 days prior written notice that includes a site plan for the proposed new Premises within the Roundhouse/Sherex area, the new Premises are paved, lighted, and of comparable functionality as the lands on UP's property where the New South Lead will be developed, and there is no cost to UP for its relocation to the new Premises;

B. Rent: The Port will not charge UP rent for the term of the Lease;

C. Term: 66 years. Upon expiration of the term, the parties will engage in good faith negotiations for a new lease upon terms that are mutually acceptable to each party;

D. Permitted Uses: The operation, relocation, and storage of intermodal containers, chassis, trailers, and tractors that support UP's intermodal business, and purposes incidental thereto, and for no other purpose;

E. Improvements: Port to provide initial paving, lighting, and fencing of Premises, but UP to maintain, repair and replace thereafter. UP will not install any improvements without the Port's prior approval based upon the Port's reasonable and sound discretion.

F. Such other terms and conditions as are consistent with the intent of this Ordinance and the Agenda Report.

Section 4. This ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This ordinance approves and authorizes the execution of an agreement in accordance with the terms of this ordinance. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed and approved

as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

Section 5. This ordinance shall be effective immediately upon adoption by the Board.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney