

BOARD MTG. DATE: 9/11/14

SUPPLEMENTAL AGENDA REPORT

TITLE	Construction and Reimbursement Agreement with Union Pacific Railroad Company for New Lead Track to Former Oakland Army Base Rail Yard
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AMOUNT	\$25 million (previously authorized) <u>\$5 million project budget increase for FY2015-16</u>			
<input 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
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SUBMITTED BY	John C. Driscoll, Director of Maritime <u>Chris Chan, Director of Engineering</u>
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APPROVED BY	J. Christopher Lytle, Executive Director
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REQUESTED ACTION	RESOLUTION
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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), located adjacent to the Port's maritime area, and will be utilized by both UP and BNSF Railway. The new lead track is entirely on UP property and requires an agreement with UP to build the new facility.

~~The Board of Port Commissioners previously authorized such an agreement at its July 24, 2014 Board meeting, with several conditions. At this time, UP and the Port continue to negotiate the agreement. During negotiations since July 24, UP has raised several concerns, including, but not limited to, the terms stipulated in the July 24 authorizing resolution. Port staff may require additional authorizations seeking authorization from the Board in order of Port Commissioners for the Port to reach agreement with UP.;~~

- ~~Port staff will supplement this report with further details as they become available. Additional terms and conditions to the Construction & Reimbursement Agreement previously authorized on July 24; and~~
- ~~Change orders to the Balfour Beatty Gallagher & Burk joint venture (BBGB) construction contract to delete the allowances for certain third party work, and adding funds to BBGB's to build the connecting track to UP's improvements.~~
- ~~Add \$5 million to the project budget authorization for expenditure in FY2015-16~~

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<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

The Port and City entered into the Amended and Restated Cost Sharing Agreement dated June 2012, where the Port agreed to develop a rail yard on its property to serve both the Port and City former OAB lands that are to be redeveloped into this new logistics center. The Port and City then entered into a Baseline Agreement with the state of California in August 2012 where the state committed \$242 million in funding for the Outer Harbor Intermodal Terminal program. This grant agreement includes a new rail yard developed by the Port, with \$65.8 million in funding from the state. The balance of the state grant is being expended by the City and its development partners on roads, utilities and site work for the new logistics development. Additionally, the Port was selected for a \$15 million federal grant from the U.S. Maritime Administration in June 2012.

The Port has entered into two contracts for the development of the new rail yard. The first is a design-build construction contract awarded to BBGB in April 2013 for site work and a 7-track manifest yard capable of handling up to 200 railcars at a time. The second is a construction contract with Stacey & Witbeck, Inc. for the 8-track unit-train portion of the rail yard.

In March 2013, the Port and UP entered into a Preliminary Design Reimbursement Agreement where UP agreed to design the necessary improvements on its property for the lead track. Under this agreement, the Port committed to reimburse UP for up to \$750,000. UP is completing its final design review before authorizing the design documents for construction.

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 facility. In addition to the Construction and Reimbursement 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 lease agreement where the Port would lease approximately 6 acres to UP as mitigation for parking areas impacted by the lead track alignment. Authorization for these two agreements will be subject to separate actions by the Board.

On July 24, 2014, the Board authorized the Construction & Reimbursement Agreement up to \$25 million. During negotiations since that date, certain key terms have changed and staff requires the Board to modify its prior authorization.

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ANALYSIS

UP's lead track construction work is a critical component of the rail yard development project. Without the lead track, unit trains would not be able to serve the City's planned dry bulk terminal and Port tenants at the future logistics center. The current rail construction work by the Port on former OAB property is contingent on effective access to and from the mainline.

The Port and UP have targeted completion of the lead track improvements by October 31, 2015, though that date is likely to slip by at least 1 to 2 months resulting from delays in ordering materials as negotiations have lasted longer than both parties initially expected. Port staff and UP are still negotiating the final language of the Construction & Reimbursement Agreement, but a draft is attached as Exhibit B.

Under this agreement, the Port will be responsible for UP's actual costs, which may exceed the current estimate. To the extent costs increase above \$25 million, the Board must authorize additional funds necessary to complete the project. However, if the Port chooses not to authorize additional funds, UP would not complete the project and it would not permit unit trains to access the Port's rail yard. This would result in much of the Port's current project being incomplete. To the extent the Port elects not to provide additional funds, UP would be left with a partially completed project on its property. The Port would be responsible for restoration costs to bring the property back to its prior condition. This mechanism is intended to protect the Port from an unlikely scenario where the costs balloon out of control. However, Port staff believes this risk is relatively low. On July 24, 2014, the Board authorized the \$25 million budget as a maximum amount based on UP's 90% design and cost estimate. The Board's authorization required UP to be responsible for any costs exceeding \$25 million. UP is unwilling to provide a guarantee that the construction costs will be less than \$25 million, nor to provide its own funds for any cost increases. Port staff request the Board's authorization of this contract without a guaranteed price, but with limited options for the Port to either continue with the project to completion at the additional cost (if needed), or to abandon the project and restore UP's property to its prior condition. UP has agreed that any mistake in the construction work would not be the Port's responsibility.

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One of the largest risks associated with the lead track construction is unforeseen environmental contamination. UP has budgeted approximately \$1.1 million for disposing of soil which may be contaminated. This soil needs to be removed so the ballast and aggregate base can be installed below grade for the new railroad track foundation. Environmental risks exposed or discovered as a result of the project but extend outside of the project area will be UP's responsibility for compliance, while the Port will be responsible for reimbursing UP for that portion of the environmental cost that lies within the footprint of the work scope. With UP agreeing to be responsible for all environmental contamination outside of the work area, Port staff estimate that the risk of potential cost over-runs is significantly mitigated by UP being responsible for contaminants that extend outside the project area.

The Board requested that UP reasonably comply with MAPLA, the Port's Maritime and Aviation Project Labor Agreement. UP has not agreed to comply with MAPLA, but is willing to incorporate some of the elements of the program. UP will be self-performing the majority of the work, however it will hire a contractor for an estimated \$6 million. UP will require its contractor to pay prevailing wage, which is one key provision of the Port's MAPLA. This puts each contractor on a level playing field and ensures that the workers will be paid a wage established by the California Department of Industrial Relations for numerous worker classifications in Alameda County. Current wages for a laborer working on demolition, for example, are \$48.27¹ per hour for wages and benefits. The Port has agreed to pay on the project's behalf, the contractor's contributions for the Social Justice Trust Fund. UP is unwilling to incorporate the provisions of MAPLA with respect to local contracting and local hiring, and its non-union worker provisions. UP prefers to keep its standard contract provisions in place for contractor selection. UP has a substance abuse policy which mirrors the goals of the MAPLA substance abuse policy. Port staff does not believe that additional negotiations are likely to convince the UP to adopt additional provisions of MAPLA.

All of the work within the UP right-of-way as well as work performed by other utility agencies were initially anticipated to be paid through a bid allowance in the BBGB contract. However, some of these contracts, including this Construction & Reimbursement Agreement, will no longer be paid through the BBGB contract at the request of the utility companies and UP. As such, a deductive change order to remove these bid allowances from the BBGB contract must be executed before the Construction and Reimbursement Agreement with UP can be executed. The deductive change order is estimated at \$21.3 million, decreasing BBGB's contract amount from approximately \$46.8 million to approximately \$25.5 million. However, change order contingency previously approved by the Board (20% of the original contract amount) would remain at the same dollar value of \$9.4 million. A reduction in change order contingency authority is not requested nor recommended as the bulk of the value was intended to mitigate unforeseen issues that may arise while constructing on the Port's portion of the former Oakland Army Base. The deductive change order will not result in any project cost

¹ Dept. of Industrial Relations, Area 1, Group 3.
<https://www.dir.ca.gov/OPRL/PWD/Determinations/Northern/NC-023-102-1.pdf>

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savings. The requested change order will allow the Port to pay these third parties directly, rather than have all payments routed first through BBGB.

In addition, UPRR has informed the Port that it will not be designing or constructing tracks between the Port – UP property line and the existing UP tracks on UP right-of-way. These 2 interface tracks connecting to UP tracks near 7th Street and West Grand Ave, will be Port-owned and maintained. Staff submitted a separate agenda report seeking authorization for Parsons Transportation Group to design these tracks. Port staff is seeking a \$3 million increase in the BBGB contract change order authority to perform this work. Staff expects to incur this expenditure in FY2015-16 and is included in the subsequent budget discussion.

BUDGET & STAFFING

Funds for the lead track reimbursement are included in the Capital Needs Assessment (CNA) as part of the Lead Track and Manifest Yard project within the Oakland Army Base program.

UP completed its 100% design and now estimates the lead track improvements at \$24.75 million, approximately 4% higher than its 90% design estimate, but within the \$25 million board authorized amount from July 24, 2014. Port staff estimates an additional \$3 million cost for BBGB to construct connecting tracks on UP property between the Port property and the UP tracks.

Port staff estimates that the total cost to complete the project is approximately \$5 million higher than currently budgeted in the CNA. In the FY12-13 budget and the subsequent award of TIGER funds, the Board authorized \$94.6 million for the rail yard development which was later codified in the Cost Sharing Agreement and grant funding agreements. Port staff do not estimate additional funds needed for the current fiscal year, however expenditures in fiscal year 2015-2016 are projected to increase by \$5 million based on current estimates. The budget increase is due to the following factors:

- Increased UP lead track construction costs,
- Additional work by BBGB to connect to UP's lead track,
- Additional utility relocation work by Kinder Morgan,
- Additional Parsons Transportation Group engineering consulting costs described in item 3.1 of this September 11, 2014 board agenda, and
- Costs associated with the UP Lease as described in item 6.1 of this September 11, 2014 board agenda.

Funding for this work will be paid from Port funds, which are the only available source for the additional budget proposed. Project costs will be re-evaluated throughout the progress of the work. Port staff requests additional budget authorization in the amount of \$5 million for the FY2015-16 budget. The 5-year CNA for the Oakland Army Base would be increased from its current \$75.654 million to \$80.654 million.

Revised 5-Year Expenditure Forecast (\$ in Thousands)

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Description	FY14-15	FY15-16	FY16-17	FY17-18	FY18-19	Total
Utility and Roadway Coordination	\$290	\$250	\$0	\$0	\$0	\$540
Lead Track and Manifest Yard	\$27,500	\$31,300	\$400	\$0	\$0	\$59,200
Support Yard	\$14,000	\$4,500	\$414	\$0	\$0	\$18,914
Community Trust Fund	\$0	\$2,000	\$0	\$0	\$0	\$2,000
Total	\$41,790	\$38,050	\$814	\$0	\$0	\$80,654

Revised 5-Year Funding Sources (\$ in Thousands)

Description	FY14-15	FY15-16	FY16-17	FY17-18	FY18-19	Total
Port Funds	\$3,890	\$13,550	\$400	\$0	\$0	\$17,840
TCIF ² State Grant	\$27,500	\$21,000	\$0	\$0	\$0	\$48,500
Federal Grant ³	\$10,400	\$3,500	\$414	\$0	\$0	\$14,314
Total	\$41,790	\$38,050	\$814	\$0	\$0	\$80,654

Note: Proposed changes from the CNA are noted in red, bold, italic font.

If UP's actual costs exceed \$25 million, the Board would have to authorize additional funds and the expenditure of those additional funds in the Construction & Reimbursement Agreement. Port staff will advise the Board of projected costs on an on-going basis.

Port staff from the Engineering, Maritime, Port Attorney, Finance and Social Responsibility divisions is engaged in the project, and no change in staffing is anticipated. Port staff is augmented by consultants including Parsons Transportation Group, Ghirardelli & Associates, American Maritime Group and others.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The work performed by UP on its own property under the proposed agreement is outside the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply. However, some elements of the MAPLA, as described above will be incorporated into the project.

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), do not apply to this matter because the work is outside

² TCIF: Trade Corridor Improvement Fund, administered by Caltrans and the California Transportation Commission

³ The Federal Grant is comprised of a TIGER 2012 Grant administered by the US Maritime Administration, and an FY04-05 omnibus appropriation administered by the Federal Highway Administration and Caltrans.

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of the Aviation and Maritime areas with entities that do not principally provide aviation or maritime services are excluded from the Living Wage Regulations.

ENVIRONMENTAL

The proposals to authorize the Executive Director to execute a Construction & Reimbursement Agreement with UP for construction of Port-related rail improvements on UP property and to approve change orders to the BBGB contract were previously reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port CEQA Guidelines.

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.

The OAB EIR and the 2012 Addendum described projects to be developed on and immediately adjacent to the former OAB, including a rail terminal on Port property and a related lead track on UP property linking to the UP mainline. The proposed agreement with UP and change orders to the BBGB contract will support construction of the previously approved lead track. Thus, no further CEQA review is required to take the actions recommended in this agenda report.

The Port and its contractors, including UP, are required to comply with applicable construction mitigation measures and standard conditions of approval in the adopted SCA/MMRP, which is available on-line at: <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/s/ApplicationandZoningInformation/OAK042281>.

GENERAL PLAN

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 work performed by UP on its own property is not within the scope of the Port of Oakland's Owner Controlled Insurance Program.

OPTIONS

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- Authorize a Construction & Reimbursement Agreement with UP. Authorize an approximately \$21.3 million deductive change order, and a \$3 million additive change order to the BBGB construction contract as described. Authorize \$5 million in additional funds for the project's FY2015-16 expenditure. This is the recommended option.
- Direct staff to negotiate different terms and conditions for the Construction & Reimbursement Agreement. Direct staff to return to the Board at a later date with feedback on the new terms and conditions from UP and direct staff to accommodate additional project delays.
- Do not authorize the proposed change orders and direct staff to negotiate different terms and conditions with UP. This would result in additional delays and would not provide any cost savings.
- Direct staff to reduce the scope to keep the project within the original budget. Grant funding agencies are unlikely to provide funding at the same levels if the Port fails to deliver all of the outcomes described in its grant agreements, so a reduction in scope will not necessarily result in a reduced cost to the Port.
- Do not authorize any agreement 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 breach state and federal grant agreements, as well as significant limitation on future business opportunities at the former Oakland Army Base.

RECOMMENDATION

Adopt a Resolution authorizing the Executive Director to:

- Enter into a Construction & Reimbursement Agreement with Union Pacific Railroad Company for its actual costs to construct a new lead track to the former Oakland Army Base rail yard, estimated at \$25 million.
- Execute a deductive change order with Balfour Beatty Gallagher & Burk joint venture to delete approximately \$21.3 million in allowances for Union Pacific and Kinder Morgan that will no longer be assigned to the contractor.
- Execute an additive change order with Balfour Beatty Gallagher & Burk joint venture to construct the interface tracks between the Port – Union Pacific property line and the UP north and south lead tracks on UP property.
- Authorize \$5 million in additional funds for the Oakland Army Base rail yard in the Capital Needs Assessment for expenditure in FY2015-16.

Exhibits:

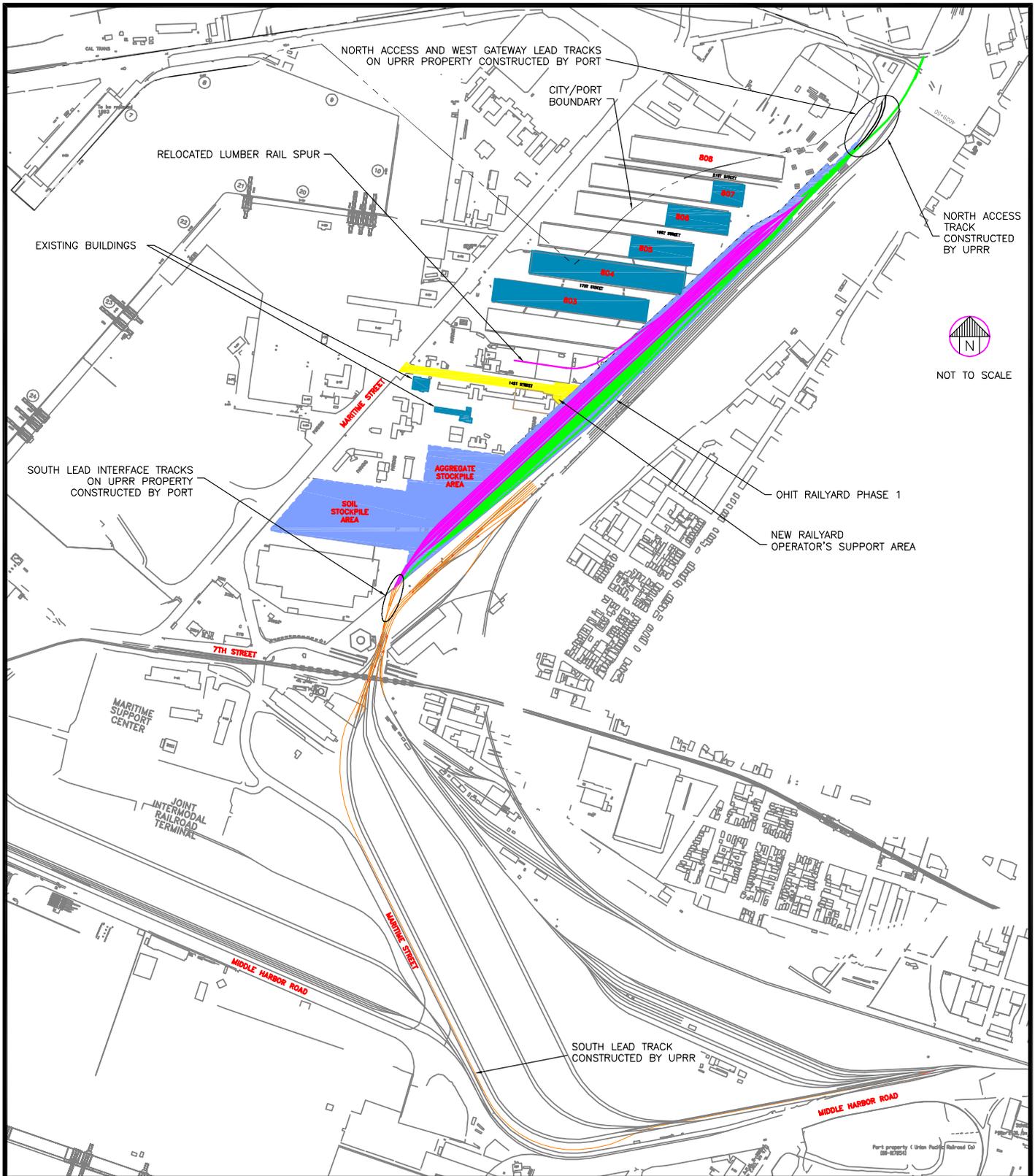
A: Map

B: Letter from Scott Moore, Union Pacific

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[Exhibit A: Map](#)



PORT OF OAKLAND

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[Exhibit B: Letter from Scott Moore, Union Pacific](#)

UNION PACIFIC RAILROAD
10031 Foothills Blvd.
Roseville, California 95747

Scott D. Moore Vice President Public Affairs - West

P 916 789 6015

September 2, 2014

Mr. Chris Lytle
Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Mr. Lytle,

I write to follow up on our discussions about the Port of Oakland's Maritime and Aviation Project Labor Agreement ("MAPLA") in relation to the proposed rail project to be built on Union Pacific's property in support of the Port's proposed bulk transfer facility. To briefly recap our conversations, the Port and UP have been negotiating terms for construction of the rail project for a considerable time and executed a Memorandum of Understanding related to it on March 14, 2014. On or about July 25, as the parties were working toward a final form of the construction agreement, the Port asked UP to comply with the MAPLA. This was a new request that had not been considered before. As staff noted in its report to the Port's board, the MAPLA simply does not apply to this project. The board nonetheless conditioned execution of the construction agreement on inclusion of the MAPLA.

As I have previously explained, as far as I can determine, UP has never agreed to apply a project labor agreement of this kind to work done on its property anywhere in the 23 states where the railroad operates. Applying the MAPLA here will likely increase the cost of the project and will certainly delay execution of the agreement and the beginning of work because UP would need to analyze MAPLA's requirements, recalculate its cost estimate, and possibly create new processes to comply with MAPLA's terms. All of this would conflict with the Port's goals of minimizing costs and completing work on its preferred schedule.

During the meeting between the parties on August 21, 2014, I agreed to send you a letter describing UP's practices with respect to some of the topics covered by the MAPLA, as reflected in a MAPLA summary sheet that you provided. This letter provides that information.

Substance Abuse Testing: Union Pacific has a vigorous substance abuse policy that it requires all employees to follow while on railroad property. Also, UP contractually requires periodic random drug testing as well as reasonable suspicion drug and alcohol testing to be performed by contractors and subcontractors in relation to work done on UP work sites.



Prevailing Wages: Union Pacific is governed by the Federal Railway Labor Act and various labor agreements with respect to the wages paid to its employees and is not subject to prevailing wage laws. However, UP will agree to require its third-party contractors to pay their employees prevailing wages for work done on this project. The Port will be required to provide the prevailing wage rates for UP to include in contracts for work to be performed.

Local Hiring: Union Pacific follows a competitive bidding process to select contractors to perform work on its property. It does not give preference to contractors based on any practice or policy they may have to hire labor who live locally to the work. However, the use of local labor forces can create a competitive advantage for contractors who contemplate this practice as part of their overall bid strategy.

Using Non-Union Workers: Union Pacific does not require its contractors to follow formulas or other requirements related to union versus non-union labor they may hire. Rather, suppliers are contractually obligated to pay wages and salaries in strict accordance with federal, state, county, municipal, and local laws.

I hope this information addresses your questions and allows the parties to move forward with finalizing the construction agreement.

Sincerely,



Scott Moore

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Item No.: 6.2
DC/kk *dwc*

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION (1) AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE AN ACTUAL COST CONSTRUCTION & REIMBURSEMENT AGREEMENT WITH UNION PACIFIC FOR THE DEVELOPMENT OF THE NEW SOUTH LEAD FOR THE NEW PORT RAIL YARD ON THE FORMER OAKLAND ARMY BASE AND TWO CHANGE ORDERS WITH BALFOUR BEATTY/GALLAGHER & BURK, J.V.; AND (2) APPROVING A \$5,000,000 INCREASE IN THE PROJECT BUDGET FOR THE PORT RAIL YARD.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 6.2 dated September 11, 2014 ("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; and

WHEREAS, the new lead tracks for the Port's new rail yard (the "Port Rail Yard") in the Former Oakland Army Base ("OAB") are necessary to connect the Port Rail Yard to the national freight railroad network and will be developed on UP's property adjacent to and southeasterly of OAB. The new lead tracks (the "Lead Tracks") will be constructed by UP and the Port will reimburse UP for its actual costs of construction of the Lead Tracks in accordance with the terms and conditions of a Construction & Reimbursement Agreement currently being negotiated between the Port and UP; and

WHEREAS, UP is scheduled to start construction on the new Lead Tracks as soon as possible, with estimated completion in October 2015; and

WHEREAS, on March 14, 2013, by Resolution No. 13-30, the Board approved the award of a contract for Design/Build Services for Outer Harbor Intermodal Terminal Railyard, Phase 1, Oakland, California ("OHIT Railyard") to Balfour Beatty Rail/Gallagher & Burk, J.V., which included an allowance for the Lead Tracks work; and

WHEREAS, that 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:

Now, therefore, be it resolved as follows:

SECTION 1. The Board hereby authorizes the Executive Director to:

A. Negotiate and execute an actual cost Construction & Reimbursement Agreement with UP for the construction of the new Lead Tracks

through UP's property to connect the Port Rail Yard to the national freight railroad network and to reimburse UP for all actual costs for the construction of the new Lead Tracks in accordance with the following major terms and conditions:

- (i) UP acknowledges that the Board has authorized \$25,000,000 for the Lead Tracks;
- (ii) Port staff will closely monitor the project budget for the Lead Tracks and promptly seek additional Board authorization to increase the amount authorized as soon as Port staff become aware that the Lead Track project budget will likely exceed (if at all) the amount authorized by the Board;
- (iii) If the Board does not authorize any further budget increase for the Lead Track, UP will cease work on the Lead Tracks within 30 days of the Port's written notice to UP to terminate the Lead Track project; and
- (iv) If the Port terminates the Lead Track project, the Port will reimburse UP for its actual costs of restoring its property to substantially the condition it was in immediately prior to the commencement of construction of the Lead Track project; and
- (v) Such other terms and conditions as are consistent with the intent of this resolution and are contained in the Agenda Report.

B. Negotiate and execute a deductive change order with Balfour Beatty/Gallagher & Burk, J.V. (Lic. No. 978387), under the contract for the OHIT Railyard, pursuant to Port Ordinance No. 1606, Section 5.j.5(iii)(a), to remove a bid allowance for the Lead Track project improvements but preserving a contingency amount equal to \$9,400,000.00; and

C. Negotiate and execute an additive change order with Balfour Beatty/Gallagher & Burk, J.V., under the contract for the OHIT Railyard, pursuant to Port Ordinance No. 1606, Section 5.j.5(iii)(a), to add the design and construction of two (2) interface tracks connecting the Lead Tracks and other tracks owned by UP on UP's property to the tracks on the Port Rail Yard in the former Oakland Army Base in an amount not to exceed \$3,000,000.00.

SECTION 2. The Board further authorizes and approves an increase of Five Million Dollars (\$5,000,000.00) to the project budget for the Port Rail Yard.

SECTION 3. The Board hereby finds and determines as follows:

A. The proposal to authorize the Executive Director to negotiate and execute a Construction & Reimbursement Agreement with UP and two change orders with Balfour Beatty Gallagher & Burk in connection with the Port-related rail improvements on UP property was 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 CAB. 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 on and immediately adjacent to the former OAB, including a rail terminal on Port property and a related lead track on UP property linking to the UP mainline. The proposed agreements will support construction of the previously approved lead track. Thus, no further CEO review is required to take the action recommended in this agenda report.

D. The Port and its contractors, including UP, are required to comply with applicable construction mitigation measures and standard conditions of approval in the adopted SCA/MMRP, which is available on-line at:

<http://www2.oaklandnet.com/Government/c/PEN/OurOrganization/PlanningZoning/s/ApplicationandZoningInformation/OAK042281>

SECTION 4. This resolution 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 resolution approves and authorizes the Executive Director to negotiate and execute certain agreements in accordance with the terms of this resolution. Unless and until a separate written agreement(s) is duly executed on behalf of the Board as authorized by this resolution, 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(s).