

BOARD MTG. DATE: **6/26/14**

AGENDA REPORT

TITLE: Material Procurement Agreement with Union Pacific Railroad Company

AMOUNT: \$10.9 million (estimated)

PARTIES INVOLVED:

Corporate Name/Principal	Location
Union Pacific Railroad Company Jack Koraleski, CEO	Omaha, NE

TYPE OF ACTION: Resolution

SUBMITTED BY: John C. Driscoll, Director of Maritime
Chris Chan, Director of Engineering

APPROVED BY: J. Christopher Lytle, Executive Director

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 adjacent to the Port’s maritime area and will be utilized by both UP and BNSF Railway. UP plans to build this new lead track at the Port’s cost. UP is scheduled to start construction in October 2014, with completion anticipated by October 2015. UP has indicated it needs to order and purchase certain railroad track materials by July 1, 2014 to have them delivered by December 1, 2014, when they will be needed for installation in order to maintain the current project schedule.

Port staff and UP are negotiating the final form of a Construction and Reimbursement Agreement, which would authorize UP to construct the improvements and be reimbursed by the Port. On June 9, 2014, UP provided the Port with its estimate of the total cost to complete the lead track improvements, estimated at a total of \$26.9 million. This total exceeds the Port’s current budget by approximately \$5 million and, therefore, additional review and discussion is needed before staff can seek the Board’s authorization to enter into such an agreement. In order to remain on schedule, staff is recommending a Material Procurement Agreement under which UP would move forward with the purchase of long-lead equipment in the amount of approximately \$10.5 million, plus about \$425,000 in delivery charges for a total of \$10.9 million. To the extent the Port and UP do not reach agreement on a Construction and Reimbursement Agreement, UP would buy back the materials, but the Port would remain responsible for the delivery charge or an equivalent re-stocking fee.

~~Port staff plans to supplement this posting with a more detailed agenda report after the initial posting date.~~

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FACTUAL BACKGROUND

The Port and City of Oakland (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 proposed for a 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 \$65.8 million in funding for the new rail yard developed by the Port. The balance of the state funds 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 for rail yard development work.

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 Balfour Beatty Gallagher & Burk Joint Venture (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. The BBGB contract is funded with Port and state funds, while the Stacey & Witbeck contract is funded with Port and federal funds.

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 currently anticipates completing its design by July 31, 2014, starting construction by October 1, 2014, and completing construction in October 2015.

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. These agreements include a Construction and Reimbursement Agreement, a Lease Agreement as mitigation for parking areas lost from UP as a result of the lead track construction, and an Industry Track Agreement that will permit rail service to the new rail yard. The proposed Material Procurement Agreement would authorize the purchase of materials which would then be installed by Union Pacific pursuant to the Construction and Reimbursement Agreement.

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 lead track improvements proposed are being designed and will be constructed, owned, operated and maintained by UP. UP will agree to ensure railroad service to the Port property pursuant to a future Industry Track Agreement, which the parties will separately execute prior to commencement of rail service. The lead track will be built inside UP's

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existing intermodal terminal (Railport) and its construction will therefore impact current operations at Railport. For this reason, UP was unwilling to allow the Port or its contractors to perform this work, preferring to directly manage the design and construction with reimbursement by the Port. UP plans to perform the railroad track construction work with its own forces and will hire a general contractor for non-railroad work such as demolition, utilities, paving and grading. The proposed lead track improvements are primarily on UP property which is outside the Port's jurisdiction. The City of Oakland will be responsible for issuing building permits.

UP estimates the lead track construction work at \$26.9 million, and the material procurement comprises about \$10.9 million of the total \$26.9 million construction work. The total amount is only an estimate based on UP's 60% design plans. UP will prepare a final estimate for the Port based on 100% complete design plans and the contractor's bid award in August 2014. UP has agreed to review its final estimate with Port staff before commencing construction. Port staff plan to continue working with UP to reduce the project cost to the extent practical, or increase available funding to minimize the amount of additional Port funding required to meet the currently estimated construction cost.

The Port and UP are targeting completion of the lead track improvements by October 31, 2015. UP has stated that the materials take up to 150 days to be purchased and delivered to the site, and UP's current construction schedule requires these items be delivered by December 1, 2014. To meet this milestone, UP must order these long-lead items by July 1, 2014. UP has stated that its construction crews are scheduled well in advance and any delay in the receipt of materials may result in UP having to reschedule its construction crew for the next available time period. UP has a number of other projects within its network that are scheduled after this project, resulting in the next available opening as far out as 1 year later than currently scheduled.

The Material Procurement Agreement would allow UP to purchase these materials, and those materials would then be used by UP for its construction work, pursuant to the Construction & Reimbursement Agreement. To the extent the Port and UP cannot agree to move forward with the Construction & Reimbursement Agreement, UP has indicated it would re-purchase the materials from the Port for use on its other projects. UP will ship the materials to the project site at a cost of approximately \$425,000, which would be non-refundable, regardless of whether the Port and UP enter into the Construction & Reimbursement Agreement. That is, the Port could be out-of-pocket about \$425,000 even if UP buys back the materials.

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STRATEGIC PLAN

<u>Strategic Priority Area</u>	<u>Goal</u>	<u>Objective</u>	<u>How this Action Implements</u>
<u>Sustainable Economic and Business Development</u>	<u>Maintain and Aggressively grow core businesses.</u>	<u>Market strategically and aggressively to attract new tenants and customers</u>	<u>The former OAB will be redeveloped into a logistics center, which takes advantage of the site's proximity to the Port terminals, rail access and overweight capability.</u>
		<u>Enhance Customer Service</u>	<u>Improved rail facilities at the Port are expected to allow customers to ship more goods by rail through the Port, particularly exporters shipping heavy products in the Port's overweight container corridor.</u>
	<u>Aggressively obtain maximum amount of external grant and government funding and regulatory relief.</u>	<u>Seek out and pursue all promising and prospective grants and external funding sources</u>	<u>The proposed rail yard is funded with state and federal grants secured by the Port and its local partners.</u>

BUDGET & FINANCIAL IMPACT

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. The project includes the BBGB construction contract, third party utility work, as well as UP's lead track expenditures.

The estimated \$26.9 million lead track cost is significantly higher than initially anticipated, but Port staff are not requesting additional budget authorization at this time. In order to keep the current construction schedule, Port staff are requesting only \$10.9 million of that amount for the procurement of long-lead materials. In the meantime, Port staff is working closely with UP and evaluating alternatives to address the overall project cost increase. Port staff will keep the Board apprised of projected costs as UP's design work advances and contractor bids are available.

5-Year Expenditure Forecast (\$ in Thousands)

<u>Description</u>	<u>FY14-15</u>	<u>FY15-16</u>	<u>FY16-17</u>	<u>FY17-18</u>	<u>FY18-19</u>	<u>Total</u>
<u>Utility and Roadway Coordination</u>	<u>\$290</u>	<u>\$250</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$540</u>
<u>Lead Track and Manifest Yard</u>	<u>\$27,500</u>	<u>\$26,300</u>	<u>\$400</u>	<u>\$0</u>	<u>\$0</u>	<u>\$68,600</u>
<u>Support Yard</u>	<u>\$14,000</u>	<u>\$4,500</u>	<u>\$414</u>	<u>\$0</u>	<u>\$0</u>	<u>\$18,914</u>
<u>Community Trust Fund</u>	<u>\$0</u>	<u>\$2,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$2,000</u>
<u>Total</u>	<u>\$41,790</u>	<u>\$33,050</u>	<u>\$814</u>	<u>\$0</u>	<u>\$0</u>	<u>\$75,654</u>

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5-Year Funding Sources (\$ in Thousands)

<u>Description</u>	<u>FY14-15</u>	<u>FY15-16</u>	<u>FY16-17</u>	<u>FY17-18</u>	<u>FY18-19</u>	<u>Total</u>
Port Funds	\$3,890	\$8,550	\$400	\$0	\$0	\$12,840
TCIF ¹ State Grant	\$27,500	\$21,000	\$0	\$0	\$0	\$48,500
Federal Grant ²	\$10,400	\$3,500	\$414	\$0	\$0	\$14,314
Total	\$41,790	\$33,050	\$814	\$0	\$0	\$75,654

STAFFING IMPACT

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.

SUSTAINABILITY

As a result of these agreements and the development of the rail yard and the logistics center, the Port plans to improve the supply chain through reduced transportation costs for customers doing business at the seaport. These cost savings result from reduced truck miles travelled for importers and exporters. A more efficient supply chain is expected to result in lower greenhouse gas and criteria pollutant emissions.

ENVIRONMENTAL

The proposal to authorize the Executive Director to execute a Material Procurement Agreement with UP to purchase and deliver long lead-time material for construction of 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.

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 will fund the purchase of material to support construction of the previously approved lead

¹ TCIF: Trade Corridor Improvement Fund, administered by Caltrans and the California Transportation Commission

² 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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track. Thus, no further CEQA review is required to take the action recommended in this agenda report.

The Port and contractors 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>.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT

The work performed by UP associated with the Material Procurement 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.

OWNER CONTROLLED INSURANCE PROGRAM

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

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.

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 of the Aviation and Maritime areas with entities that do not principally provide aviation or maritime services.

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OPTIONS

Staff has identified the following options for the Board's consideration:

1. Authorize a Material Procurement Agreement with UP for acquisition of certain long-lead materials related to the construction of a new lead track for the new rail yard under development at the former OAB. This is the recommended option.
2. Do not authorize a Material Procurement Agreement with UP by July 1, 2014, and direct staff to accommodate resulting project delays of up to 1-year;
3. Direct staff to negotiate different terms and conditions for the Material Procurement Agreement. Direct staff to return to the Board at a later date for a revised Material Procurement Agreement, and direct staff to accommodate resulting project delays;
4. 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 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

Staff recommends that the Board authorize the Executive director to execute:

A Material Procurement Agreement with Union Pacific Railroad Company for acquisition of certain long-lead materials related to the construction of a new lead track for the new rail yard under development at the former OAB.

Exhibits

A: Site Location Map

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EXHIBIT A

Site Location 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.

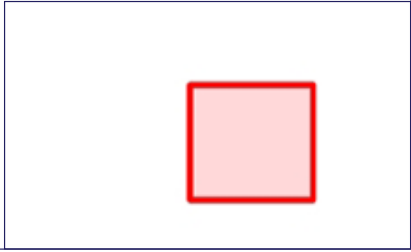
THIS MAP IS NOT TO BE USED FOR NAVIGATION



Port of Oakland Enterprise GIS Map

- Fire Stations
- Hospitals
- Government Buildings
- Schools
- Streets**
 - Freeway
 - Freeway Ramp
 - Thoroughfare / Major Arterial
 - Residential Street
- Port Area Jurisdiction
- Shoreline (Ordinary High Water)

Notes:



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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE PROCUREMENT AGREEMENT WITH UNION
PACIFIC RAILROAD COMPANY ("UP") FOR RAILROAD TRACK
MATERIALS IN AN AMOUNT NOT TO EXCEED \$10.9 MILLION.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 3.1 dated June 26, 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 track at the Former Oakland Army Base ("OAB") will be developed on UP property, and constructed by UP at the Port's cost; and

WHEREAS, UP is scheduled to start construction in October 2014, with estimated completion in October 2015; and

WHEREAS, the Port and UP are negotiating the final form of a Construction Reimbursement Agreement; and

WHEREAS, UP has indicated that in order to meet the construction schedule it needs to order and purchase certain railroad track materials by July 1, 2014, in order to have them delivered by December 1, 2014;

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. Based upon the information contained in the Agenda Report, and testimony received, the Board finds that:

A. It is in the best interest of the Port to enter into a procurement agreement with UP for the purchase of certain long lead railroad track materials needed for the construction of the new lead track at OAB, in a total aggregate amount not to exceed \$10.9 million;

B. If the Port and UP are unable to negotiate a final form of Construction and Reimbursement Agreement, which would authorize UP to construct the improvements and be reimbursed by the Port, UP will reimburse the Port for the railroad equipment, less delivery charges of approximately \$425,000, or an equivalent restocking fee.

SECTION 2. The Board hereby approves the following:

A. Entering into procurement agreement with UP for the purchase of the long lead railroad track materials, in an amount not to exceed \$10.9 million, with the agreement that if the Port and UP do not enter into a final Construction and Reimbursement Agreement, UP will reimburse the Port for the equipment less delivery charges, or an equivalent restocking.

SECTION 3. The Board hereby authorizes the Executive Director to:

A. Execute a procurement agreement with UP for the purchase of the railroad track materials, in a total aggregate amount not to exceed \$10.9 million and in a form consistent with the intent of this resolution and approved as to form and legality by the Port Attorney's Office.

SECTION 4. The actions requested in this Agenda Report do not fall within the scope of the Port Maritime and Aviation Project Labor Agreement ("MAPLA"), and the provisions of the MAPLA do not apply.

SECTION 5. The OAB Environmental Impact Report ("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 California Environmental Quality Act ("CEQA") review is required to take this action.

SECTION 6. 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 execution of an agreement(s) 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).

DRAFT

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