

BOARD MTG. DATE: 7/10/14

AGENDA REPORT

TITLE: Lease Agreement with Union Pacific Railroad Company for Approximately Six Acres of Land at in the Roundhouse ~~Property~~ Sherex Area for a Term of 66 Years

AMOUNT: \$0

PARTIES INVOLVED:

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

TYPE OF ACTION: Resolution

SUBMITTED BY: John C. Driscoll, Director of Maritime

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~~ constructed on UP property adjacent to the Port's maritime area and will be utilized by both UP and BNSF Railway. As a result of the new lead track, approximately six acres of parking area will be eliminated or restricted from UP's intermodal rail terminal operations (see Exhibit A). ~~UP has indicated it needs to begin moving its equipment out of the construction zone by September 1, 2014 in order to maintain the current project schedule.~~ Further, to compensate for the loss of parking space, UP has requested the Port to provide equivalent land elsewhere in the immediate vicinity of UP's intermodal rail terminal. UP has indicated it needs to begin moving its equipment out of the construction zone by September 1, 2014 in order to maintain the current project schedule.

In response to UP's request ~~for replacement to provide equivalent land to replace the~~ parking area, Port staff proposes to enter into a lease agreement with UP for approximately six acres of Port property and for a term of 66 years at no cost to UP, ~~in exchange for,~~ the Port receiving will gain railroad service rights on the new lead track to the new OAB rail yard pursuant to a future Industry Track Agreement. The lease agreement ~~is contingent upon UP achieving minimum intermodal cargo activity thresholds, and will terminate if UP's annual volume at the Oakland Intermodal Ramp for the immediately two consecutive years falls below 125,000 annual lifts or~~ the Port continuing to require is no longer receiving rail service to the new OAB rail yard.

In order to maintain the project schedule, staff is recommending that the Board authorize this lease agreement at its July 10 and July 24, 2014 meetings. Port staff are

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simultaneously negotiating a Construction & Reimbursement Agreement pursuant to which UP would build the lead track at the Port's cost. Port staff anticipates that the Construction & Reimbursement Agreement will be brought to the Board for its review on July 24, 2014.

~~Port staff plans to supplement this report with additional information after the initial posting date.~~ **FACTUAL BACKGROUND**

The Port plans to redevelop the former Oakland Army Base into a new logistics center that will support new cargo customers in new, best-in-class logistics facilities. 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 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.

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.

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 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 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

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construction and operation. The terms and conditions of the lease have been agreed to by both parties as shown in the attached term sheet. 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. While the exact legal description of the proposed site has not yet been completed, the general location of the proposed site is depicted on the map attached to this Agenda Report as Exhibit B.

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. A term sheet for the lease is included in this report as Exhibit C. If the lease expires at the end of the 66 year term, the parties may negotiate a new long-term lease under different terms and conditions.

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 trade and logistics development at the former Oakland Army Base, most importantly rail service to that site, without the proposed lead track. 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. Staff estimates that the benefits of rail service to the OAB rail yard outweigh the costs to the Port in potential future revenue from this leasable property.

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.

On June 27, 2014, UP stated that it had estimated construction cost for the new lead track at \$24 million based on its 90% complete design. This compares favorably with its \$27 million estimate which was provided to the Port only 3 weeks earlier, following its 60% complete design work. UP will provide an additional estimate upon completion of its design and receipt of bids from contractors for the non-UP forces work. 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.

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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

This lease agreement will generate no revenue for the Port, nor will the Port have any maintenance obligations during the term. Funds for the 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. The project includes the BBGB construction contract, third party utility work, as well as UP's lead track expenditures.

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>

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>
<u>Port Funds</u>	<u>\$3,890</u>	<u>\$8,550</u>	<u>\$400</u>	<u>\$0</u>	<u>\$0</u>	<u>\$12,840</u>
<u>TCIF¹ State Grant</u>	<u>\$27,500</u>	<u>\$21,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$48,500</u>
<u>Federal Grant²</u>	<u>\$10,400</u>	<u>\$3,500</u>	<u>\$414</u>	<u>\$0</u>	<u>\$0</u>	<u>\$14,314</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>

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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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.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT

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).

OWNER CONTROLLED INSURANCE PROGRAM

The proposed action 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.

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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.

OPTIONS

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

1. Authorize a Lease Agreement with UP. This is the recommended option.
2. 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;
3. 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

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

1. A lease agreement with UP for approximately six acres of land at the site depicted on Exhibit B for a term of 66 years.

Exhibits

A: Map of Proposed South Lead Track

B: Map of Proposed UP Lease Property

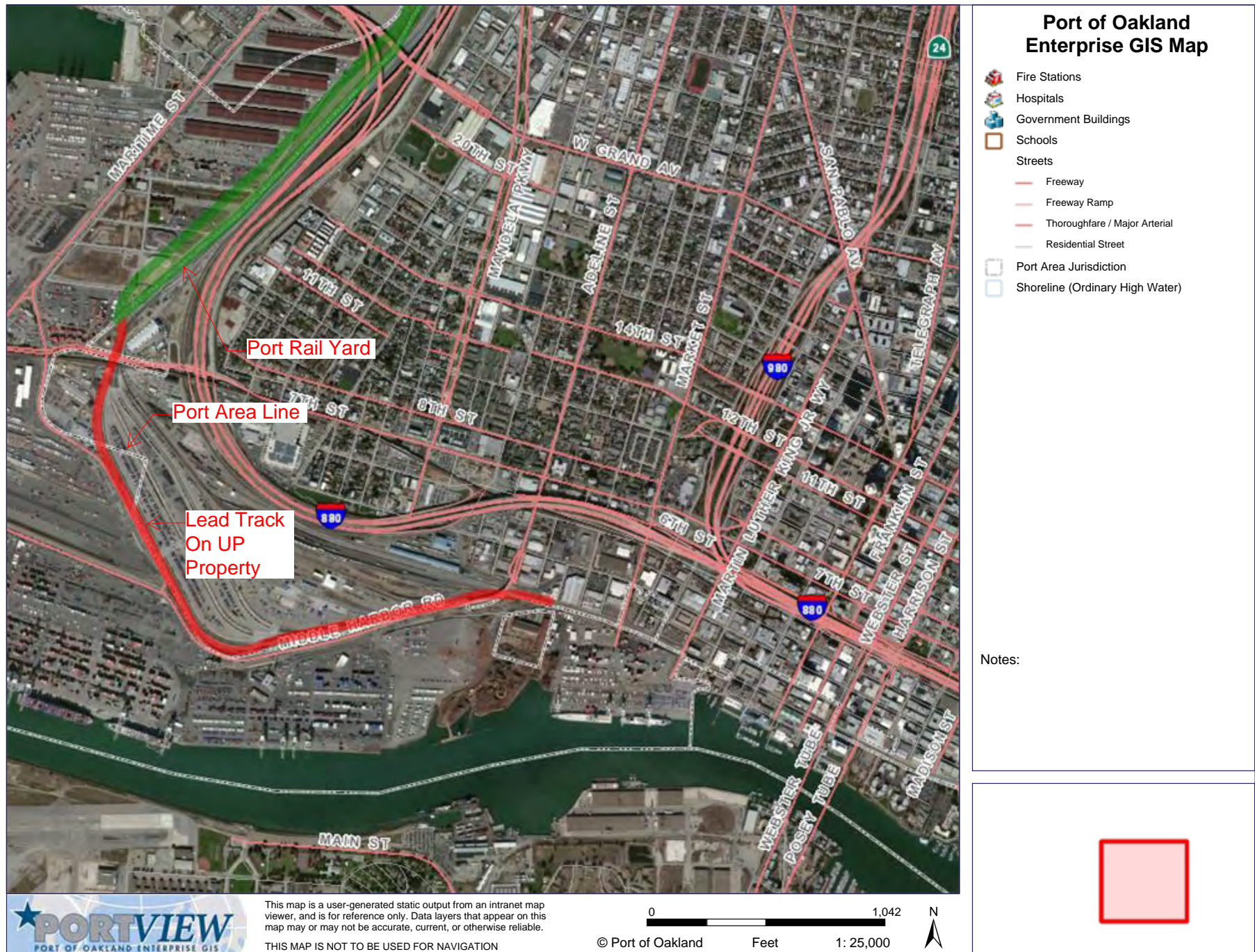
C: Term Sheet

REMAINING ACTION ITEMS Tab 6.4

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Exhibit A

Map of Proposed South Lead Track ~~Alignment~~



REMAINING ACTION ITEMS Tab 6.4

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Exhibit B

Map of Proposed UP Lease Property



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

REMAINING ACTION ITEMS Tab 6.4

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Exhibit C
Term Sheet



Memorandum

Final Form

Re: Port of Oakland Proposed Agreement for UP Intermodal Offsite Parking

Date: January 31, 2014

Union Pacific ("UP") provides the following proposed terms for further consideration of the parties. This is a working document only and not an offer to form a contract.

Purpose of Agreement	The Port of Oakland (the "Port") wishes to construct a new rail yard facility and logistics park, including a bulk cargo marine terminal and rail-served transload facilities. The Port and UP have executed an "Agreement for Rail Design Services Related to Construction of the Port of Oakland Outer Harbor Intermodal Terminal Railyard Phase 1" dated March 29, 2013 (the "Design Agreement") related to the project. The Design Agreement contemplates construction of a new lead track through UP's Oakland Intermodal Ramp for the benefit of the new facilities. UP and the Port plan to enter into a Memorandum of Understanding, an Industry Track Agreement, and a Construction Agreement to establish the terms and conditions for the construction, use, and maintenance of this new lead track. The new lead track will be constructed in an alignment that will impact a portion of the parking area in UP's Oakland Intermodal Ramp. To mitigate for the loss of parking inside UP's facility, the Port will provide equivalent parking space for UP's use at a nearby location.
Property	The area where replacement parking will be provided is a portion of the area generally depicted in <u>Exhibit A</u> (the "Premises"). The property is located directly across from UP's Intermodal Ramp entrance. The property will be approximately 5.92 acres in size or such other amount of land that the parties mutually agree upon that provides a functionally equivalent number of parking stalls as will be impacted by the project.
Relocation	The Premises cannot be moved to another location unless mutually agreed by both the Port and UP.
Lease Cost	The Port will lease the Premises to UP at no rent. UP will be responsible for any utilities needed for the use and operation of the property.
Use	<p>The Premises will be used for operating, relocating, and storing intermodal containers, chassis, trailers, and tractors that support UP's intermodal business and for no other purpose. In its sole discretion, UP may move a forklift or stacking machine onto the Premises.</p> <p>A lack of use at any time during the lease term will not constitute a willingness on UP's part to vacate the Premises and will have no effect on UP's rights under the lease.</p> <p>The Premises will be for UP's exclusive use during the term of the lease.</p> <p>Port will allow continued free and clear access to the Premises for UP and will not impede or cause to be impeded access for truck traffic to the Premises. UP</p>

	acknowledges that its access to the Premises will be over a driveway also used by other parties to access other property. Before construction of the new lead track, the Port will arrange a meeting among UP, Oakland Police, and other appropriate stakeholders to evaluate feasibility of operating non-licensed trucks across a public street between UP's Intermodal Ramp and the Premises.
Volume Threshold	In the event that UP's two-year moving average annual volume at the Oakland Intermodal Ramp for the immediately preceding two years decreases at any time after the effective date of the lease to below 125,000 annual lifts (meaning two consecutive years of volumes under 125,000 lifts,) the lease will be terminated and UP will surrender the parking area back to the Port in good condition, reasonable wear and tear excepted. UP will provide the Port with annual reports of lift volumes upon request by the Port.
Term	<p>The term of the lease will be the maximum period permitted by law, including, without limitation, the Port's Charter, unless mutually terminated by both parties at an earlier time. The agreement will provide for the parties to negotiate UP's continued use of the Premises on similar terms, if UP wishes, after the expiration of the lease.</p> <p>The lease will terminate if all rail service to the Port's new railyard facility and logistics park is permanently terminated.</p> <p>The lease will likewise terminate if UP recovers full use and possession of the Premises for intermodal parking and storage purposes.</p>
Other Conditions	The effective date of the lease will be conditioned upon the parties' execution of the Industry Track Agreement and Construction Agreement in forms mutually satisfactory to each party.
Assignment or Sublease	The Premises may be used by UP directly or by a UP contractor, provided that any such contractor's use of the Premises is consistent with the purpose and conditions described in the lease. UP will provide the Port with written notice of any assignment or sublease to such a contractor. UP will not sublease or assign the Premises to any other party for a purpose other than the one described in the lease.
Lighting	The Port will deliver the Premises to UP with lighting in place that provides reasonably similar illumination as exists in the part of UP's facility that will be impacted by construction of the lead track. UP will be responsible for the cost of use and maintenance of the lighting during the term of the lease.

Fencing	The Port will deliver the Premises to UP with boundary fencing and entry and exit gates in place designed to provide reasonable security for UP's operations on the Premises. The parties will negotiate further details about the design and placement of the fencing and gates for inclusion in the lease agreement. UP will be responsible for the cost of use and maintenance of the fencing and gates during the term of the lease. UP may open and close the gates to the Premises at any time to support operations.
Ground Surface	The Port will deliver the Premises to UP with an asphalt or concrete surface of sufficient construction to support movement and storage of loaded intermodal containers and chassis. The Port is not required to warranty the sufficiency of the ground surface to support the weight of stacked containers. The surface will be designed to provide reasonable drainage. UP will be responsible for the cost of use and maintenance of the ground surface during the term of the lease.
Staffing	UP is responsible to provide gate/security staffing for checkpoint activities.
Insurance / Liability	Each party will be responsible for its own acts and omissions in relation to the condition, maintenance, and use of the Premises. Each party may elect to self-insure or acquire insurance to cover its potential liabilities.

The foregoing terms are not binding on either party and are only intended to set forth some of the major conceptual terms that the parties agree to negotiate further in good faith as the final terms and conditions of a proposed form of lease to be executed between the Port and UP. There will be no legally binding lease between the Port and UP regarding any portion of the Premises unless and until the parties have mutually agreed upon the final form of a lease agreement and such lease agreement has been approved by the appropriate bodies for each party, signed by each party, and delivered.

Exhibit A – Aerial of Oakland



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

**ORDINANCE APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO EXECUTE THE LEASE
AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY
FOR SIX ACRES OF LAND IN THE ROUNDHOUSE/SHEREX
AREA FOR A TERM OF 66 YEARS.**

WHEREAS the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the proposed Lease Agreement with Union Pacific Railroad Company for six acres of land in the Roundhouse/Sherex area for a term of 66 years, as set forth in the Agenda Report for Agenda Item 6.4, dated July 10, 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 on now, therefore

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

Section 1. In dealing upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the record data, analysis, and findings set forth in the Agenda Report and 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 Union Pacific constructing the lead track is part of the Phase 1 Rail Yard project at the former OAB. Project components such as this have 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.

D. UP and its contractors will be required to comply with applicable mitigation measures and standard conditions of approval in the adopted SCA/MMRP, which is available on-line at:
www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/s/ApplicationandZoningInformation/OAK042281.

Section 3. The Board approves and authorizes the Executive Director to execute a Lease Agreement with Union Pacific Railroad Company for approximately six acres of land in the Roundhouse/Sharex area (all as depicted in the map attached hereto as Exhibit A) for a Term of 66 years and 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 effective agreement.

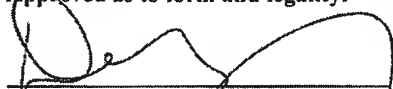
Section 5. This ordinance shall be effective immediately upon adoption by the Board.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:



Port Attorney