

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

11/9/17

Item: 5.1

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ORDINANCE: 1) APPROVING A GROUND LEASE AGREEMENT WITH CENTERPOINT-OAKLAND DEVELOPMENT I, LLC FOR DESIGN, CONSTRUCTION, FINANCE, OPERATION, AND MAINTENANCE OF A TRANSLOAD AND DISTRIBUTION FACILITY ON APPROXIMATELY 27 ACRES ON THE FORMER OAKLAND ARMY BASE WITH A TERM OF 66 YEARS AND INITIAL FIXED RENT OF APPROXIMATELY \$1.3 MILLION PER YEAR; 2) MAKING FINDINGS AND DETERMINATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; 3) APPROVING A BUDGET OF \$1 MILLION FOR CERTAIN UTILITY-RELATED EXPENDITURES; AND 4) APPROVING THE OPERATIONS JOBS POLICY FOR INCLUSION IN THE GROUND LEASE AGREEMENT AS AN EXHIBIT.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 5.1 (the "Agenda Report") of the November 9, 2017, regular meeting of the Board 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, Port staff has negotiated the terms and conditions of a Ground Lease Agreement ("Lease") with CenterPoint-Oakland Development I, LLC ("CenterPoint") for design, construction, finance, operation, and maintenance of a transload and distribution facility on approximately 27 acres of the Port-owned portion of the former Oakland Army Base (the "Premises"); and

WHEREAS, 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; and now, therefore,

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

SECTION 1. The Board hereby approves the terms and conditions of the proposed new Lease with CenterPoint with the following key material terms:

1. Term: Sixty-six (66) years with no options to extend.
2. Premises: An approximate 27-acre parcel of land located at the intersection of 14th Street and Maritime Street.
3. Rent Structure: Fixed and variable rent.

- a. Annual fixed rent increasing from approximately \$1.3 million to \$6.4 million over the term of the Lease.
- b. Annual variable rent equal to thirty percent (30%) of CenterPoint's annual net revenues in excess of \$3.2 million.

4. Construction, Operations, & Maintenance: CenterPoint will be responsible for design, construction, finance, and maintenance of all improvements, including the initial building and project improvements.

The terms and conditions of the proposed Lease are more fully set forth in the Agenda Report and are further set forth in Exhibit A, attached to this ordinance.

SECTION 2. The Board hereby finds and determines the following:

A. Section 706 of the City Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all water front properties including piers, wharves, sea walls, docks, and other improvements.

B. The proposed Lease will (i) maximize the use of the Port's existing "facilities" (as described in Section 717(1) of the City Charter), (ii) provide for the development and operations of modern and updated maritime support facilities, and (iii) support maritime revenue growth from logistics operations and generate related increases to marine terminal cargo throughput.

C. The proposed Lease is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the Lease will not interfere with the Tidelands Trust.

D. The proposed Lease includes as an exhibit an Operations Jobs Policy that reflects input from community and business interests to support job creation and local hiring. It is in the best interests of the Port to approve the Operations Jobs Policy and authorize the Executive Director to include the Operations Jobs Policy as part of the proposed Lease.

E. The proposed actions to approve the Lease and to make the findings contained herein were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), the Port CEQA Guidelines, and applicable existing CEQA documentation.

The 2002 Oakland Army Base Area ("OAB") Redevelopment Plan Environmental Impact Report (2002 Redevelopment EIR) evaluated the potential impacts of redevelopment of the 1,800-acre redevelopment area, including the former OAB and the Maritime sub-district. The EIR was certified by the lead agency, the City of Oakland, in July 2002. On September 17, 2002, the Board of Port Commissioners, acting on behalf of the Port of Oakland as a responsible agency under CEQA, adopted findings and the mitigation program in the City's EIR (Resolution No.

02317). The Port's first addendum to the 2002 Redevelopment EIR was considered in 2006 by the Board of Port Commissioners to address the potential impacts of not relocating Maritime Street to the east as originally contemplated ("2006 Maritime Street Addendum").

In 2012, the City of Oakland, in consultation with the Port, issued an Initial Study/Addendum (the Port's second addendum) to the Redevelopment EIR ("2012 OAB Addendum") to evaluate proposed changes to the redevelopment plan. Although the 2012 OAB Addendum focused primarily on facilities in the non-Port-controlled parcels, mitigation measures were updated based on more current conditions and City-adopted Standard Conditions of Approval. The Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP) was adopted by the Board of Port Commissioners on June 21, 2012 (Resolution No. 12-76). The SCA/MMRP is applicable, as revised, to projects in the OAB Area Redevelopment Plan. The current version of the SCA/MMRP can be found here: <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak042281.pdf>. Together, the 2002 Redevelopment EIR, 2006 Maritime Street Addendum, and 2012 OAB Addendum are referred to as the "Redevelopment EIR."

As described in the 2012 OAB Addendum project description, "[t]he Port of Oakland would redevelop the southern approximately 175 acres of the project site with up to 882,880 square feet of maritime-related logistics uses and activities, including container cargo storage and movement, container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers to serve cargo passing through the seaport and through the proposed rail terminal. The nature of the activities would be related to waterborne commerce moving through Oakland. The warehouses and truck terminals would be large-scale simple geometric structures. Flat or slight shed sloped rooflines would be typical, with a 30- to 60-foot height limit, depending on the building function."

The proposed Lease, and associated development activities (the "Project"), is located on approximately 27 acres of land within the southern portion of the OAB Port redevelopment area. The Project will include construction and operation of an approximately 441,000 square foot warehouse, including approximately 15,000 square feet of office space, on approximately 27 acres of land.

The Project is consistent in location, size, scale, and development type with the project analyzed in the Redevelopment EIR, and no substantial changes are proposed. Because the Project is consistent with the Redevelopment EIR and the impacts would be no greater than those described in the Redevelopment EIR, the Project does not trigger any of the conditions set forth in Section 15162 of the CEQA Guidelines, and no further CEQA review is thus required.

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

A. Execute on behalf of the Board the Lease with CenterPoint for the design, construction, operations, and maintenance of the Premises as a transload and distribution facility in accordance with the terms and conditions set forth in Exhibit A, attached to this ordinance and subject to the terms and conditions set forth in this ordinance and the Agenda Report.

B. Make such additions, modifications, or corrections as necessary to implement the Lease or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in 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. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed as 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.

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney

Exhibit A

Key Terms of Lease with CenterPoint-Oakland Development I, LLC

	Description
Agreement Type	<ul style="list-style-type: none"> Ground Lease
Premises	<ul style="list-style-type: none"> Former Oakland Army Base Approximately 27 acres of land
Lease Term & Options	<ul style="list-style-type: none"> 66-year term No options to extend
Delivery Date	<ul style="list-style-type: none"> Port to deliver Premises to CNT Oakland after the Port's completion of certain environmental remediation, if any is required
Permitted Uses	<ul style="list-style-type: none"> Warehouse, storage and other maritime trade and logistics facilities, including related incidental uses
Tenant Investment	<ul style="list-style-type: none"> 440,800 sq ft building Initial estimate of CNT's conceptual construction/development budget is approx. \$52 million Commence construction of the initial improvements within 90 days after the issuance of all required permits and approvals Default if substantial completion is not achieved within 30 months of the Delivery Date
Compensation Structure	<ul style="list-style-type: none"> Fixed (minimum) rent + variable rent Variable rent charged on CNT Oakland annual net revenues
Annual Fixed Rent After Rent Abatement Period	<ul style="list-style-type: none"> Annual fixed (minimum) rent ranging from approx. \$1.3 million up to an estimated \$6.4 million (depending on CPI and FMV) over the lease term

Variable Rent	<ul style="list-style-type: none"> • Participation rent equal to 30% of CNT Oakland annual net revenues above \$3.2 million • May be increased from time to time by 6.17% of the amount CNT Oakland invests in capital improvements that are anticipated to effect a material increase in the annual net revenue • Annual net revenues are gross revenues less fixed rent payable to Port, real property taxes, insurance, utility costs, sub-lessee reimbursements, and certain amortized costs of capital improvements • Paid quarterly, with an annual reconciliation process
Rent Abatement Period	<ul style="list-style-type: none"> • Monthly rent abated 100% for 12-month period following Delivery Date • Monthly rent abated 50% for six (6) months thereafter • Maximum rent abatement period is therefore 545 days or 18 months
Rent Escalation	<ul style="list-style-type: none"> • Annually: fixed rent increases equal to CPI, starting on first day of Contract Year 3 • Contract Years 21, 31, 41, 51 and 61: fixed rent increases based on Fair Market Value, but no greater increase than 110% of prior year rent • Rent never goes down.
Over-the-Dock (OTD) Cargo Minimum	<ul style="list-style-type: none"> • CNT Oakland to use commercially reasonable efforts to market premises so that at least 85% of all commodities/cargo handled within a contract year move OTD at the Port • CNT to provide annual OTD report to Port • Maximum sublease term is 10 years • Maximum sublease term may be extended or renewed if at least an average 50% of cargo handled by the sublessee over a 10 year period was OTD • Port has right to approve or object to any new sublease based on likelihood of meeting OTD minimum
Continuous Use	<ul style="list-style-type: none"> • CNT Oakland to use commercially reasonable efforts to cause its sublessees to use all portions of Premises continuously, subject to customary vacancies or events such as repairs and casualty damage
Assignment, Transfer, and Subletting	<ul style="list-style-type: none"> • No assignment without Board approval and only after substantial completion of initial improvements • <u>Except</u>: CNT Oakland can assign or transfer its rights and obligations under the lease to a CalPERS-owned affiliate of CNT Oakland without Board approval, so long as CNT Oakland agrees to manage the leased premises. Such CalPERS affiliate

	<p>assignment would be reviewed and approved by the Executive Director</p> <ul style="list-style-type: none"> • Port has right to review sublease for compliance with Lease
Expansion Area - Right of First Negotiation	<ul style="list-style-type: none"> • Approx. 97-acre expansion area • Right of first negotiation for a period of 4 years from the commencement of operations, and in no case later than 6 years from the Effective Date of the lease • During this period, Port may enter into lease(s) of (a) 5 years or less on Expansion Area #1 with other entities for similar uses, and/or (b) any duration if not similar uses • During this period, Port may enter into lease(s) of (a) 25 years or less on Expansion Area #2 with other entities for similar uses, and/or (b) any duration if not similar uses. • "Similar uses" is defined as warehouse, storage or other maritime trade and logistics facilities • Parties have a 90 calendar day negotiation period to reach agreement • Port, not CNT, triggers the "invitation to negotiate"
Guaranty Funds / Security Deposit	<ul style="list-style-type: none"> • CNT is required to post a sum equal to three (3) months' fixed rent to guarantee full and faithful performance with all requirements of the Proposed Ground Lease • Guaranty funds can be increased every five (5) years to the then-applicable fixed rent upon request by the Port • Title to all improvements passes to Port upon lease termination
Environmental Responsibility	<ul style="list-style-type: none"> • Port and CNT Oakland share environmental responsibilities • Delivery date of Premises to CNT is pending completion by Port of certain remedial activities, if required by oversight regulatory agency
Maintenance	<ul style="list-style-type: none"> • CNT Oakland responsible for all maintenance
Handback	<ul style="list-style-type: none"> • The Premises shall be in good working order - i.e., suitable for operations similar to those conducted therein for a period of 5 years prior to the termination date • Port may require the Lessee to demolish and remove the improvements on the Property in lieu of the handback