



AGENDA REPORT

**PROPOSED ACTION:**

**Ordinance:** Approve and Authorize the Executive Director to Execute a Cooperative Agreement with City of Oakland and Alameda County Transportation Commission that Outlines Ownership, Operations, and Maintenance Obligations Associated with the 7<sup>th</sup> Street Grade Separation East Project, and Find that the Proposed Action Complies with the California Environmental Quality Act as it was Analyzed in the 2012 Addendum to the 2002 Oakland Army Base Area Redevelopment Plan Environmental Impact Report **(Maritime)**

**Resolution:** Authorize the Executive Director to Execute an Amendment to a Memorandum of Understanding with City of Oakland and Alameda County Transportation Commission that Outlines Roles and Responsibilities During Construction of the 7<sup>th</sup> Street Grade Separation East Project **(Maritime)**

**Submitted By:** Bryan Brandes, Director of Maritime; Danny Wan, Executive Director

**Parties Involved:** Tess Lengyel, Executive Director, Alameda County Transportation Commission; and Ed Reiskin, City Administrator, City of Oakland

**Amount:**

\$175,000 Annual Average in FY 2022 Dollars; Operating Expense\*

\*Initial capital cost paid by others

**EXECUTIVE SUMMARY:** The 7<sup>th</sup> Street Grade Separation East Project (7SGSE or Project) is part of the GoPort Program designed to address congestion, operational, and access concerns at Port of Oakland (Port) Seaport. The Port, the City of Oakland (City), and the Alameda County Transportation Commission (ACTC) are working in partnership to plan, design, and deliver GoPort projects. Various agreements between the three parties are required to properly deliver the GoPort Program. As the 7SGSE will soon be in construction it is now the appropriate time to execute two additional agreements related to construction responsibilities among the parties and a cooperative agreement that discusses longer term operations and maintenance obligations among the parties.

**BACKGROUND & ANALYSIS**

7SGSE is a component of the GoPort Program, which is a collaboration between the Port, City, and ACTC to implement strategic roadway infrastructure improvements to address congestion, operation, and access concerns in the Port's Seaport. In addition to 7SGSE, the other two GoPort components are the 1) Freight Intelligent Transportation Systems (currently under construction) and 2) Street Grade Separation West (completed preliminary design). This Agenda Report exclusively focuses on 7SGSE.

The 7SGSE Project will re-align the roadway between I-880 and Maritime Street and replace the existing 7<sup>th</sup> Street roadway underpass/rail bridge structure. The new improvements will meet current seismic and design standards, including lane and shoulder widths, vertical and horizontal clearances, and include a new multi-use pedestrian/bicycle trail. Safety improvements, increased truck and vehicular throughput, reduced traffic congestion, as well as opportunities for safe non-motorized movements within the corridor are all benefits that will be realized upon completion. The most recent total cost estimate for the project is approximately \$365 million (including design, construction, and ACTC staff labor and consultant support), which is being funded through a mix of local, State, and federal funds (this total excludes Port staff labor and consultant support). Refer to Exhibit A for a visual depiction of the project.

Planning and design for 7SGSE is complete, including Port concurrence with the plans. Construction is currently anticipated to start in Summer 2023, last approximately 30 months and be administered/managed by ACTC.

### **Recently Executed Agreements**

Below is a summary of recently approved agreements that were required for ACTC to receive Right of Way (RoW) and Ready to List (RTL) certification from the granting agencies, which are necessary for construction commencement.

- 1. Relocated Public Highway Underpass Agreement – also referred to as the Construction and Maintenance Agreement (C&M Agreement).** The C&M Agreement, which was recently approved, is strictly between ACTC and Union Pacific Railroad (UP) and outlines construction, ownership, repair, maintenance, access, and liability obligations between the two parties. Specifically, UP will assume ownership, as well as operations, maintenance, and repair (O&M) of all railroad and railroad-related facilities on the rail bridge, while ACTC will assume O&M of the other structural elements, which include the rail bridge and new alignment roadway. Note that all ongoing obligations/rights that ACTC assumes in this agreement (beyond construction of the improvements) will be transferred to the Port and City in a separate agreement (refer to *Cooperative Agreement* detailed further below).
- 2. Temporary License Agreement (TLA).** A TLA between the Port and ACTC was approved by the Board in November 2019 and was recently amended in June 2022 to extend the term given project delays, resulting from lengthier than anticipated negotiations with UP for the C&M Agreement. The TLA provides ACTC (and its contractors) necessary rights to access and construct the project on Port property with a new termination date of December 21, 2026.

### **Agreements Requiring Additional Board Approvals**

Now that the Project is ready to begin the construction phase the Port is being requested to approve and authorize execution of the following two agreements:

1. **Cooperative Agreement.** The Cooperative Agreement is a three-way agreement between the City, Port, and ACTC, whereby ACTC will transfer and assign its ongoing O&M responsibilities, as well as its access, liability, and other rights (as detailed in the C&M Agreement) to the Port and the City. Specifically, the Port will assume O&M of the new rail bridge structure, while the City will assume O&M of improvement associated with the new roadway alignment beneath the rail bridge. Further analysis of the implications of the Port assuming O&M of the rail bridge structure are detailed below. Port staff is recommending that the Board authorize the Executive Director to execute the Cooperative Agreement.
2. **Amendment to Memorandum of Understanding (MOU).** An MOU between the City, ACTC, and Port was approved by the Board in November 2019 via Resolution 19-114 and executed in early 2020; it outlines certain obligations and actions required to move the project forward. The MOU needs to be amended to further clarify roles and responsibilities between the three parties during the construction period (which specified that ACTC will be administering the construction contract with the Port and City supporting as needed). Port staff is recommending that the Board authorize the Executive Director to execute the MOU Amendment.

### **Implications of Port Assuming Ownership & Responsibility for Bridge Structure**

As previously mentioned, the Cooperative Agreement obligates the Port to assume ownership and O&M of the new rail bridge structure, including piers, abutments, girders, seats, bearings, waterproofing membrane or seal on the decking, column bents, deck plate, and railing. The Port's assumption of this obligation is necessary for the project to move forward as neither UP nor the City would agree to assume said obligation. Furthermore, it was determined that such an ownership structure is consistent with certain other agreements that UP has with other Bay Area jurisdictions.

The current cost of the Port-owned portion of the bridge structure is approximately \$25 million in today's dollars. Assuming a 100-year lifespan of the rail bridge structure, average annual maintenance and repair costs are projected to be approximately \$175,000, totaling about \$17.5 million in current dollars. "Maintenance and repair" include annual bridge inspections and cleaning (including graffiti removal); bearing replacements (anticipated in 50 years), waterproofing, deck-plate spot repairs, painting; and Port management/oversight of such work.

In addition to O&M responsibilities, the Port's assumption of ownership means that at or near the end of the bridge's structure's useful life (or earlier, if there is a major unforeseen event; e.g., a large earthquake), the Port will need to finance major improvements or a reconstruction of the asset. The Port will need to consider this new asset in its future financial plans.

UP would assume O&M of all railroad and railroad-related facilities on the bridge, which consist of the tracks, ties, ballast, and the perimeter fence on UP property. Other than for annual inspections, the Port will need to follow UP's standard right of entry process for accessing UP's portion of the bridge structure in order to perform certain maintenance work, and may be subject to market rate fees should such work impact the railroad's operations or require UP involvement. As previously noted, the City would assume O&M of the rail bridge structure footings and roadway underneath the bridge structure.

### **Future Approvals for 7SGSE**

Port staff also plan to request that \$20 million of a state earmark be put towards ACTC's RoW acquisition for 7SGSE. This amount is part of the larger budget earmark of the California State Transportation Agency (CalSTA), which totals \$279.5 million, recently secured by the Port for various truck, rail, and neighborhood safety corridor improvements.

Additionally, approximately 2.4 acres of Port land will become part of the new 7<sup>th</sup> Street public roadway, with another approximately 2.5 acres temporarily provided during construction. Consequently, Port anticipates seeking Board approval when the Project is completed in late 2026 to formally designate the new roadway as a public street.

### **Conclusion**

Both the Cooperative Agreement and the MOU Amendment are necessary to advance the Project. 7<sup>th</sup> Street accounts for nearly 40% of all traffic accessing the Seaport, the benefit of implementing the 7SGSE Project is estimated to be worth the costs and risks of assuming ownership and O&M of the bridge structure. Staff's conclusion is based primarily on two key points: construction of the bridge structure and new roadway (currently estimated at \$365 million) (a) is fully funded with external (non-Port) funding, and (b) will replace important but significantly deteriorated infrastructure.

## **OTHER FINDINGS AND PROVISIONS**

### **ENVIRONMENTAL REVIEW**

The proposed action was analyzed under the California Environmental Quality Act (CEQA) and was found to be:

- ☐ Categorically exempt under the following CEQA Guidelines Section:

Choose an item.

- ☐ Exempt from CEQA because it is not a "Project" under CEQA Guidelines Section 15061(b)(3).

☒ Other/Notes: The Board determined, by Resolution No. 19-114 dated November 21, 2019 and Ordinance 4541 dated December 12, 2019, that CEQA review of 7SGSE was included in the 2002 Oakland Army Base Area (OAB) Redevelopment Plan Environmental Impact Report (2002 Redevelopment EIR), the 2012 Addendum, and an Addendum prepared by the Port per Section 15164 of the CEQA Guidelines to document minor changes as described in the 2002 Redevelopment EIR as addended. The 7SGSE Project does not trigger any of the conditions set forth in Section 15162 of the CEQA Guidelines. Therefore, no additional environmental review is required.

### **BUDGET**

- ☐ Administrative (No Impact to Operating, Non-Operating, or Capital Budgets); OR

☒ Operating

☐ Non-Operating

☐ Capital

Analysis: Future maintenance costs associated with assuming ownership of the bridge structure will be included in future Maritime Division annual operating expense and/or capital budgets, as appropriate.

### **STAFFING**

- ☒ No Anticipated Staffing Impact.

- ☐ Anticipated Change to Budgeted Headcount.

Reason:

- ☐ Other Anticipated Staffing Impact (e.g., Temp Help).

Reason:

### **MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):**

Applies? No (Other) - see explanation below.

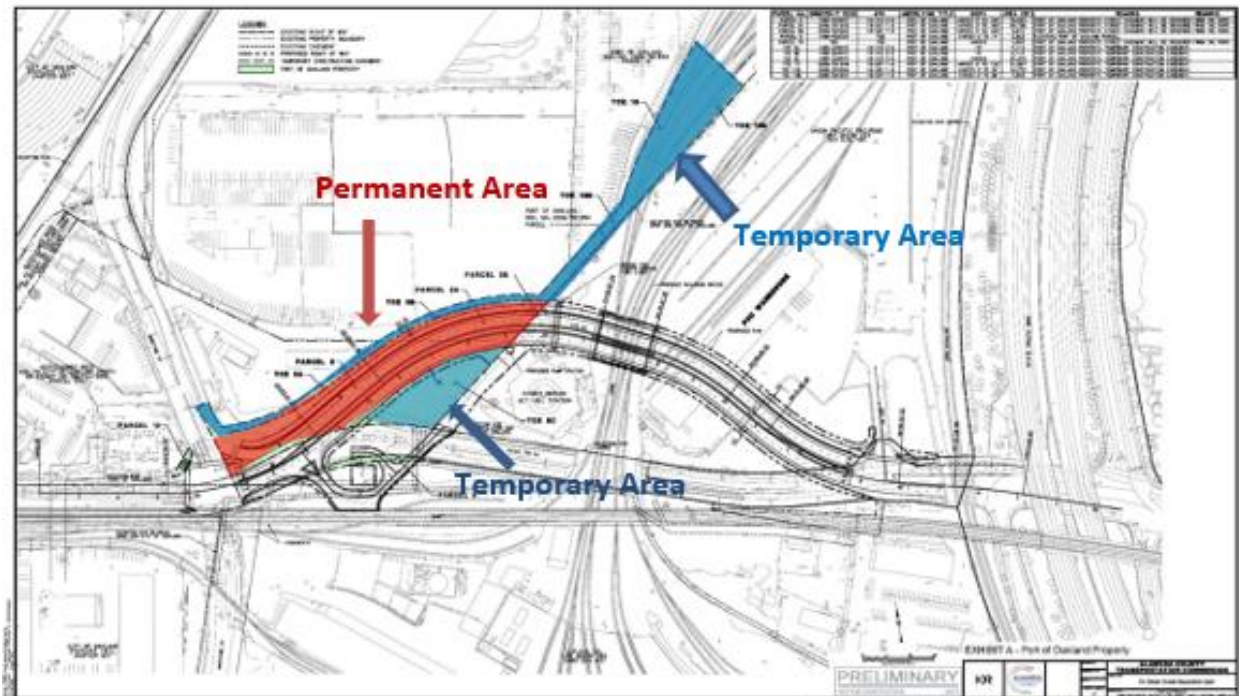
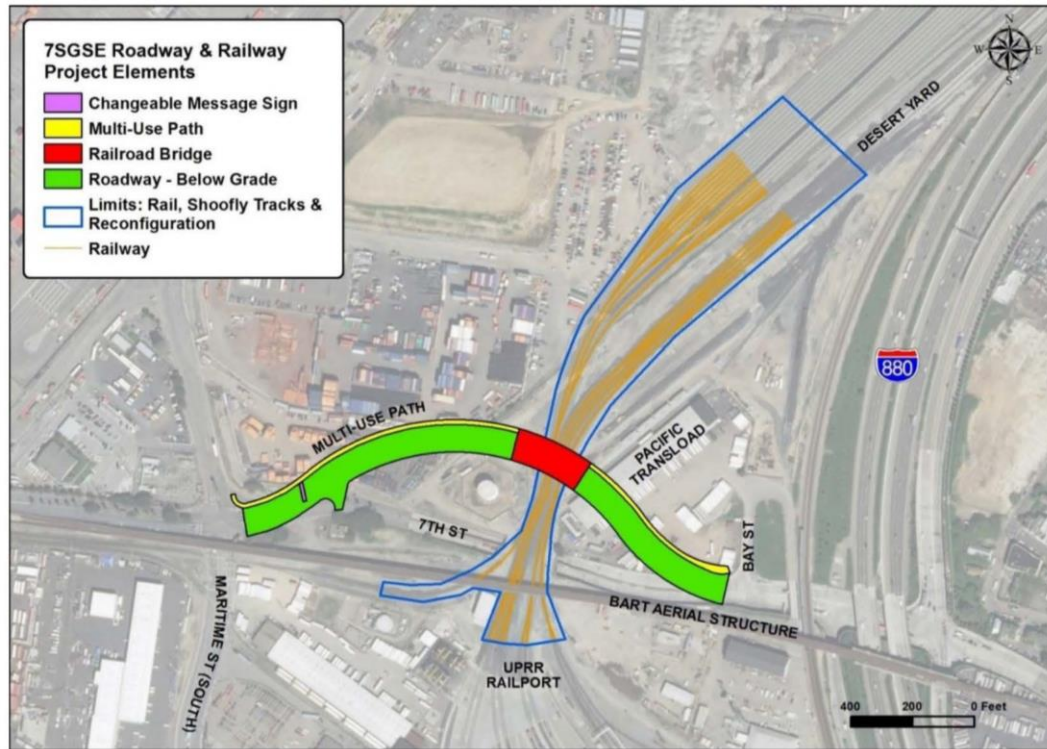
### **LIVING WAGE** (City Charter § 728):

Applies?

<input checked="" type="checkbox"/> <u>Additional Notes:</u> Proposed action do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of MAPLA do not apply.	No (No Covered Agreement) – proposed action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage requirements.  <input type="checkbox"/> <u>Additional Notes:</u>
<b><u>SUSTAINABLE OPPORTUNITIES:</u></b>  <u>Applies?</u> <b>No.</b>  <u>Reason:</u>	<b><u>GENERAL PLAN</u></b> (City Charter § 727):  <u>Conformity Determination:</u>  Maritime/Aviation – proposed action conforms to policies for transportation designation of the General Plan.
<b><u>STRATEGIC PLAN.</u></b> The proposed action would help the Port achieve the following goal(s) and objective(s) in the Port’s Strategic Business Plan:  <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Grow Net Revenues         </div> <div style="width: 50%;"> <input checked="" type="checkbox"/> Modernize and Maintain Infrastructure         </div> <div style="width: 50%;"> <input checked="" type="checkbox"/> Improve Customer Service         </div> <div style="width: 50%;"> <input type="checkbox"/> Pursue Employee Excellence         </div> <div style="width: 50%;"> <input type="checkbox"/> Strengthen Safety and Security         </div> <div style="width: 50%;"> <input type="checkbox"/> Serve Our Community         </div> <div style="width: 50%;"> <input type="checkbox"/> Care for Our Environment         </div> </div>	

## Exhibit A

### Depiction of the 7SGSE Project



Schematic above depicts permanent and temporary area to be provided by the Port for this project.