

## AGENDA REPORT

**Ordinance:** Approval of 7<sup>th</sup> Supplemental Agreement with BNSF Railway Company at the Joint Intermodal Terminal to Reduce the Acreage of the Leasehold by 2.4 acres (Maritime)

**MEETING DATE:** 6/22/2017

**AMOUNT:** No cost  
Choose an item.

**PARTIES INVOLVED:** Burlington Northern Santa Fe, Fort Worth, Texas  
Brandt Ring, Executive Vice President

**SUBMITTED BY:** John C. Driscoll, Director of Maritime

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

BNSF Railway Company leases the 87-acre Joint Intermodal Terminal from the Port. The lease agreement is currently in hold over (month to month) since its expiration in 2014. Staff requests the Board's approval of a 7<sup>th</sup> Supplemental Agreement that would remove 2.4 acres from the BNSF leasehold. The Port requires removal of this parcel from the BNSF leasehold in order to install rail infrastructure for a new development project.

### **BACKGROUND**

BNSF Railway Company (BNSF) has leased the Joint Intermodal Terminal Facility (JIT, also known as Oakland International Gateway or OIG) since 2002. The Port built the 87-acre facility (the Premises) in the early 2000s.

BNSF and the Port amended the lease six times since its commencement in 2002. The 6<sup>th</sup> Supplemental Agreement expired on September 30, 2014. Although Port Staff and BNSF have been negotiating for a new long-term agreement since 2014, the parties have not been able to reach consensus on the terms of such an agreement. As a result, BNSF has been leasing the JIT on month-to-month holdover since that date.

Through the 4<sup>th</sup> Supplemental Agreement, executed on January 1, 2012, the Port expanded BNSF's leasehold by 2.4 acres in the northern portion of the Premises, adjacent to BNSF's

entrance gate. BNSF never made improvements to this additional area and it was never functionally incorporated into the Premises (in fact, BNSF never moved the fence line). The 2.4-acre parcel of land is the location of planned rail tracks for the new Cool Port Oakland facility. See Exhibit A.

## **ANALYSIS**

The Port needs to regain possession of the 2.4-acre parcel by September 2017, in order to commence construction of the subject rail infrastructure. Construction of this infrastructure in a timely manner is an obligation of the Port under both the Cool Port lease and the grant agreement between the Port and the California Transportation Commission and California Department of Transportation (CalTrans).

During holdover, the Port has the unilateral right to modify compensation but no other terms of the lease. Therefore, BNSF's and the Board's approval of an amendment to the lease are required to reduce the acreage of the Premises. The proposed 7<sup>th</sup> Supplemental Agreement amends only the Premises of the BNSF lease (i.e., removal of 2.4 acres of land from the premises). Staff does not propose to lower BNSF's rent because the 2.4-acre parcel was previously added to the lease at no cost to BNSF, and because BNSF has made no improvements to the parcel.

Staff does not propose to any other amendments to the BNSF lease, since negotiations are on-going and the Port already has broad rights to modify compensation during holdover.

## **BUDGET & STAFFING**

The proposed action does not have any budget or staffing impact.

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

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

## **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal A: Objective 1: Maximize the use of existing assets

## **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"), apply to this agreement as the tenant employs 21 or more employees working on Port-related work and the tenancy agreement is greater than \$50,000.

## **ENVIRONMENTAL**

CEQA Determination: The proposed 7th Supplemental Agreement with BNSF to remove a 2.4 acre parcel of land from the Premises was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. This action is categorically exempt from 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.

## **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

## **OPTIONS**

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

- Approve a 7<sup>th</sup> Supplemental Agreement with BNSF to reduce the acreage of the Premises by 2.4 acres. This is the recommended option.
- Approve a 7<sup>th</sup> Supplemental Agreement with BNSF to reduce the acreage of the Premises by 2.4 acres, and to include other changes as may be directed by the Board. Under this option, BNSF may not agree to execute a 7<sup>th</sup> Supplemental Agreement and the Port would have to regain possession of the 2.4-acre parcel through other available means.

- Do not approve a 7<sup>th</sup> Supplemental Agreement with BNSF. Under this option, Port staff would have to regain possession of the 2.4-acre parcel through other available means.

### **RECOMMENDATION**

Authorize the Executive Director to enter into a 7<sup>th</sup> Supplemental Agreement with BNSF Railway Company at the Joint Intermodal Terminal to reduce the acreage of the lease Premises by 2.4 acres.

## Exhibit A

