

AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Enter into a Lease with Unicold Corporation for Approximately 3.6 Acres of Combined Warehouse, Office and Yard Space for a Term Expiring on June 30, 2039, Resulting in Average Annual Rent of Approximately \$1.1 Million, with One 5-Year Option to Extend (**Maritime**)

MEETING DATE: 9/30/2021

AMOUNT: Approx. \$1.1 million Average Annual Rent (FY22-39)
Revenue

PARTIES INVOLVED: Unicold Corporation
Darryl Kawano, Vice President & Chief Operating Officer

SUBMITTED BY: Bryan Brandes, Maritime Director

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

Unicold Corporation (Unicold) has been a Port tenant since 2002, when it entered into a lease for a container freight station and transload facility in the Maritime Support Center area of the Seaport. That lease has been amended several times and currently expires in 2023, unless Unicold exercises two options to extend up to 2033. In late 2019, Unicold approached Port Staff to extend the term of the lease. The parties have negotiated a new lease with Unicold that would expire in 2039, provide Unicold one option to extend, modify compensation terms, and generally modernize lease terms. The new lease would result in average annual revenue of about \$1.1 million during the initial term. Staff is requesting the Board's approval of the proposed lease with Unicold.

BACKGROUND

Unicold operates a container freight station and transload facility for maritime general and temperature controlled refrigerated intermodal cargo in the Maritime Support Center (MSC) area of the Seaport (Exhibit A). The facility comprises a rail-served building/warehouse known as D-516, office space, and a yard located on approximately three acres of land. The Port built the original building (Building D-516) in 2003, and Unicold built and paid for an extension to the building in 2008. Unicold also currently leases additional adjacent space from the Port on a month-to-month basis (Space Assignment).

Unicold's current lease expires December 31, 2023, and includes two, 5-year options to extend the term through December 31, 2033, at Unicold's sole discretion. Portions of the Space Assignment area is scheduled to become unavailable on or about 2025, because of the Port's plans to relocate one of its electrical substations (see below under Analysis).

Unicold currently pays the Port annual fixed rent of approximately \$764,000 for the facility (and about \$60,000 for the adjacent Space Assignment). There are no variable rent provisions. Since the lease became effective, Unicold's compensation has been increased twice based on the consumer price index (CPI) and Tariff No. 2-A (Tariff) rates, at 13.5% and 17% (there is a cap of 17%). In 2024 and 2028, if Unicold exercises one or both of its remaining options, compensation is subject to a fair market value (FMV) adjustment (subject to mutual agreement of the parties), and Unicold has the right to terminate the lease if said adjustment exceeds certain thresholds. Because the lease dates to 2002, it is outdated in several ways, including but not limited to: it does not require a security deposit, has no handback provisions, and has very limited environmental provisions.

Unicold is in the process of succession planning and aligning its facilities in California and Hawaii. In late 2019, Unicold approached Port staff to extend the term of its current lease and fix future rent. Staff and Unicold took this opportunity to negotiate a variety of changes to the lease including modernization of the lease; including or expanding important provisions such as security deposit, handback, maintenance; incorporating environmental measures; and modifying and pre-setting compensation provisions. These negotiations have resulted in a new lease, referred to herein as the Proposed Lease, for the Board's approval.

ANALYSIS

As noted above, the negotiations have resulted in a new lease that is substantially modernized. Key terms of the Proposed Lease are as follows; where appropriate, Staff highlights the benefit of the proposed term, relative to the current lease:

- **Premises.** The premises of the Proposed Lease are expanded to include the Space Assignment area as well as additional acreage, for a total new leasehold of about 3.6 acres. Unicold is responsible to maintain the whole new Premises.
- **Premises Recapture.** The Port is currently working on a design for the reconstruction of its two main Seaport electrical substations. It is likely one substation will be relocated to an area next to or overlapping with a portion of the former Space Assignment. Therefore, the Proposed Lease reserves rights to the Port to take back ("recapture") a portion (about 0.2 acres) of the premises, temporarily or permanently; however, if permanently, the Port must provide alternative space of at least the same size and function (contiguous with the Premises) for the remainder of the term.
- **Term.** The initial term shall be effective December 1, 2021 and expire on June 30, 2039. Contract years ("CY") are July 1 to June 30. Upon the Effective Date of the Proposed Lease, the current lease and Space Assignment would terminate. This term extension commits Unicold to about 17.5 years of fixed rent (or 5.5 more years

than the current lease, assuming Unicold exercises all its options under the current lease) with no early termination rights by either party.

- **Option to Extend Term.** While Unicold wanted the Proposed Lease to run through at least 2044, Staff believes setting rent and committing the property this far in advance would not serve the Port's best interest. Therefore, the parties negotiated one, 5-year option in 2039, which would allow Unicold to extend the term through June 30, 2044, if the parties can agree on compensation. Unicold must provide the Port with a notice of its intent to extend no less than 12 months before expiration of the initial term.
- **Compensation.** As of the Effective Date through June 30, 2022, the current lease and Space Assignment terminate and Unicold takes possession of the new/expanded Premises. Unicold will pay about \$824,000 for the new Premises through June 2022, which is the equivalent of the current lease rent plus the current Space Assignment Rent (i.e., total revenue to the Port is flat). Starting July 1, 2022, Unicold's rent changes to reflect negotiated terms, and grows at an average compound annual growth rate (CAGR) of about 3.46% per year through expiration in June 2039. Average annual rent over the term would be about \$1.1 million.

While it is difficult to predict rent increases under the current lease post-2023, Staff has made certain assumptions to compare the Proposed Lease to the current lease including the Space Assignment (i.e., status quo). The table below presents this comparison on a net present value (NPV) basis.

	Through FY 2033	Through FY 2039
Status Quo NPV		
Lease Only	\$8.5 million	\$12.3 million
Lease + Space Assignment (SA)	\$9.0 million	\$13.1 million
Proposed Lease NPV		
Lease	\$9.0 million	\$13.4 million
Variance NPV		
Proposed vs. Current Lease	\$0.5 million	\$1.1 million
Proposed vs. Current Lease + SA	\$0.005 million	\$0.3 million

The table above assumes a 4% discount rate. The calculations for the status quo also assume that Unicold continues to lease the Space Assignment and exercises all its lease options post-2023, reflects Port Staff's assumptions about future CPI and FMV adjustments, assumes Unicold does not choose to terminate early, and assumes negotiations for a term extension post-2033 are successful.

Through FY 2033, the Proposed Lease yields approximately the same revenue as would be expected under the status quo; through FY 2039, however, the Port gains an additional five years of fixed rent (at about \$1.3 million annually) or an estimated \$0.3-\$1.1 million of NPV revenues.

- **Security Deposit.** Unicold will provide a security deposit equal to the average of three months' rent during the initial term. During the extended term, if any, the security deposit shall increase to equal the average of three months' rent for the extended term. This is a significant change from the current lease which requires no deposit.
- **Maintenance.** Unicold is responsible for all maintenance of the premises, according to a general plan of maintenance, as well as 5-year plans of maintenance subject to Port review and approval. The Port retains limited maintenance obligations: foundations and structural frame of the portion of Building D-516 built by the Port, common utilities, pavement only if due to defect or deficiency of the sub-grade, and damage caused by negligence of the Port. As compared to the current lease and Space Assignment, the revised division of maintenance responsibilities shifts additional responsibility (and cost) to Unicold, while setting forth clear maintenance requirements.
- **Title to Improvements.** Unicold retains title of the portion of Building D-516 that it constructed and continues to insure it at its sole cost. Upon expiration of the Proposed Lease, title vests in the Port.
- **Transfer.** Unicold must obtain the Port's approval for any desired sublet or transfer of the Proposed Lease; however, a transfer of ownership within the Ishiyama Family shall not constitute a transfer and shall be granted upon Unicold's (a) showing the Ishiyama family has ownership interest equal to or greater than 50% and (b) confirming transferee's intent to continue the business operations consistent with the terms of the Proposed Lease. This provision is new.
- **Environmental Provisions.** The Port's Environmental Exhibit is included in the Proposed Lease, and Unicold has committed to using zero-emission cargo handling equipment inside Building D-516; replacing two yard hostlers with hybrid or electric equipment upon the earlier of 2025 or upon need to replace/substantially repair; and ensuring any new yard hostler purchase is zero-emission (unless such technology is not commercially available, in which case Unicold shall purchase the then-cleanest available technology). These provisions are new relative to the current lease.
- **Surrender and Holdover.** During holdover, if any, Port has right to fix monthly rent from time to time in its sole discretion. Handback provisions are included and require Unicold to restore the premises to a "minimum condition," which includes a condition suitable for the same operations that were conducted by Unicold in the five years prior to expiration. The Port retains the right to demolish the improvements on the premises, in which case Unicold would reimburse the Port up to 25% of its demolition costs. The Port also retains the right to require Unicold to demolish the improvements (at its sole cost) at handback if Unicold refuses or fails to meet the minimum condition. These provisions are new compared to the current lease, and help the Port ensure that the premises will be returned in a suitable condition.

BUDGET AND STAFFING

The Proposed Lease will not impact budgeted FY 2022 Maritime operating revenues as the initial rent is set to equal the current lease rent plus current space assignment rent through the end of FY 2022. The Proposed Lease will result in projected annual revenue ranging from about \$824,000 to \$1.5 million. The proposed revenue is consistent with, and in certain years higher than, the Port's 5-year revenue projections.

The proposed action does not have any staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The action to enter into this Proposed Lease Amendment with Unicold does 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 to this action. However, if in the future tenant construction work under these Agreements exceeds the thresholds required for coverage under the MAPLA, the provisions of MAPLA will apply when Port Permits are requested for that construction work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenue
- Goal: Modernize and Maintain Infrastructure

LIVING WAGE

Living wage requirements may apply because the agreement is for a value greater than \$50,000. However, the condition of the tenants employing 21 or more employees must also be met for the tenants to comply with the living wage requirements and all of its obligations. In addition, for future construction work under these agreements prevailing wage requirements will apply.

SUSTAINABILITY

Unicold has not proposed any new development within the Premises. Unicold has made certain commitments about zero and near zero emissions equipment, as outlined above in the Analysis section. The Proposed Lease incorporates the updated "Environmental Responsibilities" Exhibit, which requires Unicold to adhere to any Maritime Air Quality Improvement (MAQIP) 2020 and Beyond Plan requirements including but not limited to, 1) providing annual equipment and operational data for emissions inventories, 2) meeting with Staff annually to evaluate feasibility of using zero-emissions equipment, and 3) participate in pilot projects of new zero-emission equipment.

ENVIRONMENTAL

The proposal to approve and authorize the Executive Director to execute a new lease with Unicold was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). This action is categorically exempt from CEQA pursuant to CEQA Guidelines, Section 15301, which exempts operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. Unicold will continue to engage in the same type of maritime-related cargo handling and services as it has since 2002 in the same location. Therefore, the Proposed Lease with Unicold meets the criteria for this exemption. No further CEQA review is required.

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)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

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

1. Approve and authorize the Executive Director to execute the Proposed Lease with Unicold, as described herein.
2. Approve and authorize the Executive Director to execute the Proposed Lease with Unicold under different terms than those stated in this Agenda Report.
3. Do not approve or authorize the Executive Director to execute the Proposed Lease with Unicold. Under this option, Unicold's current lease would remain in effect through at least December 2023, and possibly through December 2033, if Unicold exercises all its remaining options to extend.

RECOMMENDATION

Staff recommends that the Board approve and authorize the Executive Director to execute a lease with Unicold Corporation for approximately 3.6 acres of combined warehouse, office, and yard space for a term expiring on June 30, 2039, resulting in average annual rent of approximately \$1.1 million, with one 5-year option to extend.

EXHIBIT A

Site Location Map for Unicold Proposed Lease Premises

