

## MEMORANDUM

January 5, 2017

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. Leslie Katz  
Hon. Eleni Kounalakis  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request approval of an Amended and Restated Lease No. L-14397 (“Lease”) between the Port of San Francisco and San Francisco Bay Railroad, Inc. located at 100 Cargo Way to Provide for a Term Extension of Five Years, a Minimum Annual Guaranteed Payment to Port, and an Estimated \$1.3 Million Tenant Investment in Rail Infrastructure Improvements subject to prorated rent credits. (This action constitutes the Approval Action for the project for the purposes of the California Environmental Quality Act, pursuant to Section 31.04(h) of the San Francisco Administrative Code.)

### **DIRECTOR’S RECOMMENDATION: Approve the Attached Resolution**

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#### **Executive Summary**

Port staff is seeking the Port Commission’s approval of a proposed amended and restated lease extension with San Francisco Bay Railroad (SFBR). This amended lease will provide for a term extension of five years, an increase in the leased premises by 24,000 square feet to 442,236 square feet, a minimum annual guaranteed (“MAG”) payment to Port, a reduction of the expansion areas at Piers 80 and 96 of 4,000 feet of track, and an estimate of \$1.3 million tenant investment in rail infrastructure improvements subject to prorated rent credits.

#### **Background**

The Port of San Francisco has regular rail traffic through its railyard, the Intermodal Container Transfer Facility (“ICTF”), situated on Cargo Way in the Southern Waterfront. The current railyard premise is 418,236 sq. ft. For more than a decade the Port has contracted with San Francisco Bay Railroad (SFBR) to provide short line freight railroad services and rail terminal operations. Based along the Southern Waterfront within the Bayview-Hunters Point

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community, SFBR has strived to be a good steward of the facility by maintaining a clean and environmentally-compliant operation, by hiring its employees and subcontractors almost exclusively from the local community, and by seeking opportunities to improve the environment at the railyard and in the local neighborhood.

SFBR's current lease will expire on December 31, 2018 for premises located at 100 Cargo Way near Pier 96. The railyard provides short line rail services to the Port's maritime customers with cargo movement in and out of the Port.

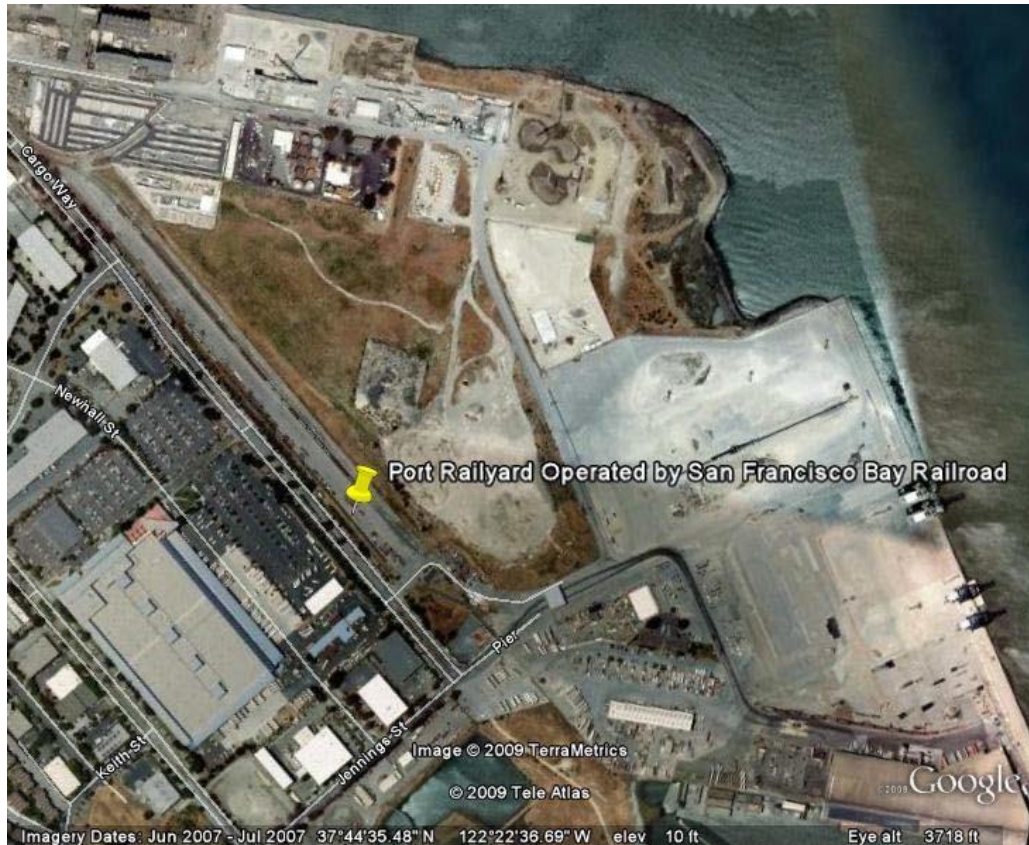
SFBR's core business is transporting contaminated soils in containers and gondola cars from various San Francisco construction projects by rail to a landfill in Utah. SFBR has transported debris from various large San Francisco construction projects such as Doyle Drive, Transbay Transit Terminal, Salesforce Tower, UCSF and Kaiser Hospitals - Mission Bay, The Exchange at Mission Bay, 801 Brannan Street (formerly Concourse Exhibition Hall), and the SFMTA Third Street Light Rail project.

SFBR is currently bidding for contracts with the new Warriors arena project, and other large San Francisco construction projects such as construction of buildings around the Transbay Terminal, the PG&E Potrero Plant demolition and clean-up project near Pier 70.

As allowed in their current lease and rail agreement, SFBR has used the Port cargo facilities at Piers 80 and 96 and 4,000 feet of track to store and build trains for prior or subsequent movement to/from the mainline. With its steady growth over the last few years, SFBR has had to rely heavily on the additional track at Piers 80 and 96. The recent revitalization of Pier 80 for marine cargo operations and leasing at Pier 96 has reduced SFBR's railroad car storage capability by 4,000 track feet and made the consolidating and building of unit trains difficult and inefficient.

With the Warriors' arena project due to begin construction in early 2017, SFBR believes that it is critical to streamline its operation to enable movement of construction debris for this important project. SFBR anticipates steady future volumes that will require adequate storage space. In order to consolidate the storage of railcars, SFBR is proposing constructing 3,200 ft. of track at the rail yard to consolidate the Port's storage track into one primary location and replace the Piers 80 & 96 storage tracks. This new track would increase SFBR's Premises and Facility and ICTF by approximately 24,000 sq. ft. on the north side of their current premises. While the net result is a reduction of 800 feet of track, consolidating the storage tracks inside the ICTF facility will allow the railyard to operate more efficiently to handle the current volume of material, and will decrease impacts on the Southern Waterfront community, reducing locomotive use and the disruptive blocking of city streets. SFBR would invest approximately \$1.3 million for this infrastructure work, based upon engineering estimates.

SFBR and the Port have negotiated an Amended and Restated Lease that provides for a term extension and will allow SFBR the ability to competitively market its services to major construction projects by consolidating its storage track into the ICTF facility.



### **Business Terms**

The Amended and Restated Lease will extend the lease term by 5 years or until December 31, 2023 and will add 24,00 square feet to the lease premises (currently 418,236, and will be 442,236 sq. ft.). The Amended and Restated lease will provide for a minimum annual guarantee payment to the Port of \$250,000. SFBR will invest an estimate of \$1.3 million into new rail and infrastructure improvements which the Port considers valuable improvements to the facility. There will be a rate increase per rail car fee from \$200 to \$250, and a rate increase per bin fee from \$40 to \$50, payable to the Port. All fees are subject to an annual 3% increase. The consolidation of the track into the railyard will allow better efficiencies for the Port's rail network, substantially reducing the current scattered storage of rail cars. Upon completion of the new track, the track will belong to the Port and SFBR will maintain it.

### **Rent Credit**

The Amendment will provide rent credits to SFBR for a maximum of 50% of the total actual documented costs but for an amount not to exceed \$650,000. The Port will issue SFBR rent credits only against revenue generated over the MAG (\$250,000) to be invoiced and paid monthly in twelve (12) equal installments of \$20,833 (Minimum Monthly Guarantee) at a rate of 100%. If the total actual documented costs are less than the projected \$1.3 million, SFBR will only receive a credit of 50% of that amount. Conversely, if the project costs escalate over the project amount, SFBR will only receive credit up to \$650,000.

SFBR has a separate Rail Operating Agreement (“ROA”) with the Port to provide short line rail service. As a part of the rail agreement, SFBR made significant repaving improvements to the rail yard, which are subject to rent credits under the Lease, the first capital improvements to the Port railyard since its construction in 1985. The rent credit remaining balance from this project is \$170,826.85. To date, SFBR has received credit at 50% of their monthly wharfage payment per the rail agreement.

Staff recommends that the outstanding rent credits in the amount of \$170,826.85 be carried over to the Amended and Restated Lease and allow SFBR to receive the remaining balance of rent credits from the paving project. The balance and new rent credits would become “one pot” of rent credits that SFBR applies 100% against overage of the monthly MAG payment.

### **Projected Earnings**

The table below describes SFBR’s payments to the Port for the last five years and a projection of earnings for the next five years. SFBR experienced a volume increase in FY 2016-17 which resulted in an 81% increase in the rent payment to the Port.

SFBR expects the increased volume to continue in the next five years. As shown below, the Port will receive the benefit of this growth in rent and in a rent credit to purchase 50% of the new track. The new track will also be retained as a capital improvement to the Port upon completion of the track.

Five Year Rent History and Five Year Projection										
FY 11/12 to FY 20/21										
L- 14397										
	FY11/12	FY12/13	FY13/14	FY14/15	FY15/16	FY16/17 <sup>1</sup>	FY17/18	FY18/19	FY19/20	FY20/21
# of Railcar	1,921	1,087	988	1,371	2,515	2,200	2,600	2,100	2,163	2,228
# of Bins	114	504	146	72	1					
Wharfage	388,760	215,960	203,440	277,280	503,040	493,200	669,500	556,983	590,888	626,915
Minimum Annual Guarantee						104,167	257,500	265,225	273,182	281,377
Overage						389,033	412,000	291,758	317,707	345,537
Available Rent Credits <sup>2</sup>						241,827	650,000			
Rent Credit Issued						(241,827)	(412,000)	(238,000)		
<b>Total Payment to Port</b>	<b>388,760</b>	<b>215,960</b>	<b>203,440</b>	<b>277,280</b>	<b>503,040</b>	<b>251,373</b>	<b>257,500</b>	<b>318,983</b>	<b>590,888</b>	<b>626,915</b>
<sup>1</sup> Railcar projection provided by San Francisco Bay Railroad FY 16/17=2,200; FY17/18 = 2,600; FY18/19 = 2,100, FY19/20 = 2,163 and FY20/21 = 2,228 Assumes Minimum Annual Guarantee to start February 1, 2017.										
<sup>2</sup> Paving Project rent credits, \$241,827 and New Track Improvements, the lesser of one-half of the actual documented costs or \$650,000.										

### **Community Benefits**

SFBR reports a wide range of community benefits as follows:

- SFBR employees 45 skilled and unskilled railroad, railyard and truck workers, paying a living wage to largely local employees.
- SFBR has partnered with the Bayview local truckers on an innovative short haul truck-to-rail system, which has sustained skilled work in the Southern Waterfront.

- SFBR have a good environmental regulatory record. According to SFBR, their rail operations saves approximately 1 million gallons of diesel fuel annually versus using long-haul trucking, moreover reducing the CO2 emissions by 22 million pounds annually, or 90% compared to long-haul trucking alternative. This in turn removes more than 10,000 one-way truck trips annually off Bay Area roads and bridges.
- SFBR operates the railyard with best practices ecologically with use of goats grazing instead of use of herbicides. SFBR generates local honey from 14 bee hives.
- SFBR has also committed to planting new vegetation on the fence along Cargo Way improving the aesthetics of the railyard.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)**

The permitted use will be a continuation of the existing and related uses and has been determined by the San Francisco City Planning Department to be Categorical Exempt pursuant to the California Environmental Quality Act, as issued on January 5, 2017. This amendment will add 3,200 ft. of track to the Ports current railyard and replaces SFBR’s ability to use the 4,000 ft. of storage track in Pier 80 and Pier 96. There is a net loss of 800 feet of track. This added track will allow SFBR to minimize transporting rail cars throughout the Southern Waterfront and consolidate their storage track into one facility. It will allow them to handle approximately the same volumes of soil shipments as now and is not an intensification of use. The new track will reduce rail engine emissions as it will allow more concentrated building of trains at the rail yard.

If the Port Commission approves the proposed Amended and Restated Lease through the attached Resolution based on this categorical exemption, its action constitutes the "Approval Action" (as defined in S.F. Administrative Code Chapter 31, as amended, Board of Supervisors Ordinance Number 161-13). As such, the CEQA decision prepared in support of this Approval Action will be subject to appeal within the time frame specified in S.F. Administrative Code Section 31.16. Typically, an appeal must be filed within 30 calendar days of the Approval Action.<sup>1</sup>

### **STRATEGIC OBJECTIVE**

This proposed Amended and Restated Lease is in line with the Port Strategic Plan as follows:

#### **Engagement:**

*By proactively marketing Port maritime leasing opportunities through a robust multidimensional marketing campaign promoting the Port as a unique “brand”.*

#### **Economic Vitality:**

*By “attracting and retaining maritime and non-maritime commerce in order to contribute to the economic vitality and long term viability of the Port and the City”; and*

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<sup>1</sup> For information on filing an appeal under Chapter 31, see the Port Commission agenda under NOTICES and contact the Clerk of the Board of Supervisors at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102, or call (415) 554-5184

Stability:

*By our Stability objective by “maximizing external investment capital for infrastructure funding*

**RECOMMENDATION**

Port staff recommends that the Port Commission approve the Amended and Restated Lease No. 14397 between the Port of San Francisco and the San Francisco Bay Railroad, Inc.

Prepared by: Peter Dailey  
Deputy Director, Maritime

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 17-05**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Port's railyard, also known as the Intermodal Container Transfer Facility ("ICTF"), is located at 100 Cargo Way in the City and County of San Francisco within the Port's jurisdiction; and
- WHEREAS, By Port Commission Resolution No. 07-46, the Port Commission approved (i) Lease No. 14397 with LB Railco Inc. ("Lease") to operate the ICTF; (ii) Rail Agreement No. 14503 designating LB Railco Inc. as the Port's dedicated short line rail operator; and (iii) Lease of Locomotive Nos. 25 and 23 leasing Port's equipment to LB Railco Inc. ("Locomotives Lease"); and
- WHEREAS, The above agreements were effective on January 1, 2008 and expire on December 31, 2018; and
- WHEREAS, In March 2008, LB Railco Inc. changed its name to San Francisco Bay Railroad Inc. ("SFBR"); and
- WHEREAS, By Port Commission Resolution No. 09-17, the Port Commission approved a First Amendment to the Locomotives Lease and a Second Amendment to the Lease to extend deadlines and make other revisions to requirements regarding certain tenant improvements; revise requirements regarding the retrofit of equipment and specifications for use of biodiesel fuels; replace an incorrect map of the Premises; accept a cash security of \$100,000 instead of a letter of credit; and update the agreements to incorporate new provisions including updated indemnity provisions; and
- WHEREAS, SFBR and the Port now wish to amend and restate the Lease to: provide for a term extension of sixty (60) months; establish a minimum annual guaranteed Wharfage payment ("MAG") in an initial amount of Two Hundred Thousand Dollars (\$250,000); increase Wharfage rates under the Lease and the Rail Agreement from \$200 to \$250 per rail car and from \$40 to \$50 per bin/container payable to Port; require SFBR to install, maintain and repair new track (which will be subject to the terms and conditions of the Rail Agreement) at an estimated cost of \$1.3 million and provide for a rent credit equal to the lesser of one-half (1/2) of the actual documented costs of the improvements or \$650,000; increase all fees by 3% annually; slightly increase the acreage of the premises by about 24,000 square feet

in order to accommodate the new track; and update the lease form to be consistent with the current Port form lease and include all current City Requirements; Estimate (“Amended and Restated Lease”); and

RESOLVED, On January 5, 2017, the San Francisco Planning Department determined the Amended and Restated Lease and the infrastructure improvements to be undertaken by SFBR to be Categorical Exempt under the California Environmental Quality Act (“CEQA”); now, therefore, be it

RESOLVED, The Port Commission approves the Amended and Restated Lease and authorizes the Executive Director of the Port or her designee, to execute the Amended and Restated Lease on the terms described above and in the Memorandum dated January 5, 2017; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments or other modifications to the Amended and Restated Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 10, 2017.***

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**Secretary**