



THE PORT
OF LOS ANGELES
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: JUNE 6, 2012

FROM: REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - PROPOSED TENANCY IN
COMMON AGREEMENT WITH THE PORT OF LONG BEACH**

SUMMARY:

Staff requests approval of a successor Tenancy in Common (TC) Agreement between the City of Los Angeles Harbor Department (Harbor Department) and the Port of Long Beach (POLB). The TC Agreement establishes the parties' rights and responsibilities with respect to the jointly-owned property in the County of Los Angeles acquired from 1992 through 1995 for purposes of constructing the Alameda Corridor.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the proposed 12-year Tenancy in Common Agreement with the Port of Long Beach;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the proposed Tenancy in Common Agreement; and
3. Adopt Resolution No. _____.

DISCUSSION:

Background – From 1992 through 1995, the Harbor Department and POLB jointly purchased properties along Southern Pacific Railroad Company (SPRR), Union Pacific Railroad Company (San Pedro Branch), and Atchison, Topeka and Santa Fe Railway Company (ATSF) right-of-way (ROW) in the County of Los Angeles as part of the Alameda Corridor construction project (Transmittal 3). The railroad property in the SPRR ROW was acquired to serve as the main rail line and the railroad property in the former San Pedro Branch was acquired to serve as the alternative route for the Alameda Corridor. All railroad properties acquired are held by the Harbor Department and POLB as tenants in common, each holding an undivided 50 percent interest in the railroad properties.

On October 30, 2003, the Board approved the initial TC Agreement between the Harbor Department and the POLB (Transmittal 1). The TC Agreement had a ten-year term that commenced retroactively on December 29, 1999, and expired on December 31, 2009. Between 2010 and 2011, discussions took place to amend the expired TC Agreement. However, it was ultimately determined that an amendment to extend the expired TC

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Agreement was not the preferred alternative. Instead, the parties mutually agreed that a replacement agreement would be more appropriate.

POLB took the lead in drafting the proposed replacement TC Agreement, which the Harbor Department reviewed and requested that minor clarifications be made before formalizing the agreement. The proposed replacement TC Agreement would commence retroactively on January 1, 2010 and terminate December 31, 2021 (Transmittal 2).

The purpose of the TC Agreement is to provide for the development, operation, and management of the jointly-owned railroad properties (Property), including the equal sharing of all revenue derived from the Property. The TC Agreement establishes a Property Operating Committee (POC) consisting of representatives from the Harbor Department and POLB who meet on a bi-monthly basis to develop necessary forms for use in managing the Property; recommend Board approval or disapproval of contracts relating to the Property; communicate with railroad operators, tenants, and governmental entities with respect to issues related to the Property; monitor the progress of any construction or maintenance work to ensure compliance with all operating and construction agreements related to the Property; develop annual operating budgets for the Property; make recommendations to the Board regarding capital improvements or maintenance of the Property; establish procedures for maintaining Property records and accounting; recommend to the Board necessary insurance coverage; and undertake any other duties necessary to efficiently and effectively operate and own the Property.

The POC also oversees a property management company, which manages the day-to-day operations of the Property. The Harbor Department and POLB executed the first of two five-year term extension options under a Property Management Agreement (PMA), thereby extending the term of the PMA to December 10, 2012. Before the PMA expires on December 10, 2012, the Harbor Department and POLB intend to conduct a Request for Proposals (RFP) as part of a selection process for a new PMA.

The Harbor Department and POLB are also parties to various other agreements that involve the use of the Property for the construction and operation of the Alameda Corridor, one of which is the Alameda Corridor Use and Operating Agreement that deals with the bond financing and payment requirements for the Alameda Corridor construction.

Under the terms of the TC Agreement, the Harbor Department collects rental revenue within the Harbor District and then transfers 50 percent of such revenue to POLB. No transfer payments have been made to POLB since the expiration of the original TC Agreement. Once the replacement TC Agreement is executed, a retroactive transfer payment of \$281,090 will be made to POLB, representing its equal share. Subsequently, the TC Agreement stipulates that the costs and expenses incurred in connection with the operation, ownership, and management of the Property be borne equally by the Harbor Department and POLB. It also stipulates that POLB shall

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indemnify and hold the Harbor Department harmless from and against all liabilities arising from any act or omission by POLB regarding the Property, and vice versa.

Further, the TC Agreement mandates that the Harbor Department and POLB pursue arbitration whenever there is a deadlock on a decision with respect to a material issue relating to the Property before one can initiate legal proceedings against the other.

Aside from minor clarifications, the duration of the agreement is the only variance to the original TC Agreement. The proposed replacement TC Agreement will commence retroactively on January 1, 2010, and terminate on December 31, 2021. This 12-year term was proposed in order to retroactively capture the two years since the expiration of the original TC Agreement, while still allowing a nearly ten-year period from the date that the new TC agreement is fully executed in order to minimize the frequency of future renewals. All other terms and conditions remain the same as in the original TC Agreement.

The proposed TC Agreement was approved by POLB's Board of Harbor Commissioners at its meeting on March 12, 2012.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a successor TC Agreement with POLB that establishes the parties' rights and responsibilities with respect to jointly-owned property in the County of Los Angeles. As an administrative activity, the Director of Environmental Management has determined the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment effect.

FINANCIAL IMPACT:

Approval of the proposed TC Agreement replaces the expired TC Agreement and memorializes the framework that governs the rights and responsibilities of the parties to the TC Agreement. Upon execution of the TC Agreement, the Harbor Department will be authorized to transfer to POLB (as a tenant in common) its 50 percent share of the rental revenue derived from the Property. To date, the balance due to POLB for its pro-rata share of the jointly-owned property revenue is \$169,593 for Fiscal Year 2010 and \$111,497 for Fiscal Year 2011, totaling \$281,090. Funds in these amounts have been accrued in Account No. 21020, Center No. 7000000.

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CITY ATTORNEY:

The TC Agreement has been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Tenancy in Common Agreement (original)
2. Tenancy in Common Agreement (proposed)
3. Site Map

FIS Approval: WP (initials)
CA Approval: mm (initials)


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APPROVED:


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