

AGENDA REPORT

Ordinance: Extension and transfer of Space Assignment Agreement from Industrial Railways Company to Capital Feed and Port Transfer Inc. on the former Oakland Army Base, including approximately \$1.4 million in site and building improvements
(Maritime)

MEETING DATE: 10/8/2015

AMOUNT: \$780,000 (Annually)
Revenue

PARTIES INVOLVED: Industrial Railways Company, Chris Stotka, Oakland CA
Capital Feed, Todd Lush, Oakland CA
Port Transfer Inc., Mark Menezes, Oakland CA

SUBMITTED BY: John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

The current Space Assignment Agreement for Industrial Railway Company (IRC) on the former OAB is set to expire on December 31, 2015. The Port has no immediate plans to develop this area and would like to retain tenancy for up to three more years. IRC has indicated it would like to transfer its existing Space Assignment Agreement to its current customers, Capital Feed and Port Transfer, Inc.

BACKGROUND

IRC currently has a Space Assignment Agreement for Building 804, Bays 4 and 5, as well as a rail-served yard just north of 14th Street at the former Oakland Army Base (OAB). The Space Assignment Agreement is set to expire on December 31, 2015. IRC's current customers, Capital Feed (CF) and Port Transfer Inc. (PTI), utilize the rail yard and Building 804, respectively. CF is handling grain via railroad and then transferring the grain to containers for export. PTI's main business is the import of grains, but it is also transferring bulk grain and other feed products to containers for export, and is using Building 804 and trucks instead of rail.

ANALYSIS

The IRC Space Assignment Agreement was initially approved by the Board effective July 1, 2013 for a term of 30 months, expiring December 31, 2015. The rate for each tenant was set at the 2013 Tariff rates, and those rates have been in effect for the entire 30-month term of the leases. During this term, Tariff rates have been increased twice, but the leases were not subject to those increases.

IRC has one customer that uses its rail yard facility (i.e., CF) and another customer that utilizes its warehouse space in Building 804 (Bays 4/5) (i.e., PTI). Since the Port is currently negotiating with IRC, under the name Oakland Global Rail Enterprise (OGRE), to be the Port's Rail Operator for the new rail facility at the former OAB, IRC has asked that their lease be transferred to these two companies so that IRC can focus solely on its rail operator function.

The new Space Assignment Agreements with CF and PTI will have a term of two years, with a 1-year option at the Port's sole discretion, expiring December 31, 2017 or December 31, 2018 if the option is exercised. The warehouse lease rate will increase from \$0.33/sq. ft. to the current Tariff rate of \$0.36/sq. ft. and the yard space lease rate will increase from \$0.169/sq. ft. to the current Tariff rate of \$0.182/sq. ft., effective January 1, 2016. The tenants will be subject to any future Tariff rate increases over the term of the new leases.

For CF, the land rent at Tariff rates will serve as base rent. In addition to base rent, CF will pay the Port additional, variable rent on a per-Forty Foot Equivalent Unit (FEU) basis. More specifically, CF will pay the Port \$15 per FEU for each FEU move over 6,000 containers per year. Once 12,000 FEU is reached, CF will pay the Port \$10 per FEU. CF will not pay rent on the extension area until the improvements are substantially completed, or 4 months, whichever is earlier.

In addition to taking over the rail yard facility from IRC, CF is currently working with Port staff to expand the rail yard by an additional 4 acres, which will allow CP to greatly increase its current export container volume through the Port. The site for the expansion is the current site of MDI Forest Products, which is being relocated to a smaller site to the south on the former OAB.

Various improvements need to be made to infrastructure at the new Space Assignments:

- Due to the age of Building 804, roof repairs are required to keep it functional.
- The CF expansion will grading and paving, as it is currently in very poor condition, as well as new fencing and a new, replacement driveway for an adjacent tenant.
- All of these repairs and improvements will be performed by the tenants, who will be reimbursed by the Port upon completion of the work via rental credits against monthly rent. Prior to commencing any such work, each tenant must prepare and submit to the Port's Chief Wharfinger a written description of the proposed work together with a cost estimate of such work and any other information that the Chief Wharfinger may require.

Each tenant can only proceed with repairs after the Chief Wharfinger has provided written approval.

- The Port will cap building repair costs for PTI at no more than \$70,000 over the life of the remaining lease (i.e., lease term remaining after completion of the improvements). The CF expansion work will be capped at no more than \$1.4 million. The Port Engineer's estimate for this work is \$1.35 million.

An illustrative map showing tenant locations is attached as Exhibit A. The new CF yard (including relocated driveway for the adjacent tenant) is attached as Exhibit B.

BUDGET & STAFFING

The proposed 2-year lease extensions (and 1-year options) for CF and PTI will result in estimated annual gross revenue from base rent of \$1.1 million in the first year. Based on projected container volume, additional annual rent from CF is estimated at \$84,000. In total, gross revenue in the first year would be about \$1.2 million. Net revenue after expenses for repairs/improvements is estimated at \$780,000 annually, assuming (a) improvements are completed in the first year of the leases, (b) the Port exercises its options to extend the leases an additional year; and (c) no future Tariff increases. This is consistent with the FY 2015-16 budget for this land area, which was \$0.7 million.

The proposed action does not have any staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The action to extend and transfer Space Assignment Agreements 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

Goal A: Create Sustainable Economic Growth for the Port and Beyond

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

Goal B: Maintain and Aggressively Grow Core Businesses

- Goal B: Objective 1: Retain existing customers and tenants.

LIVING WAGE

Based on the Space Assignment Agreements and information provided by the Agenda Report, living wage requirements may apply to these agreements because the agreements are 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, future construction work under these agreements prevailing wage requirements will apply.

ENVIRONMENTAL

The proposal to authorize the Executive Director to extend and transfer space assignment agreements with tenants on the former OAB through 2017 or 2018 and to approve approximately \$1.4 million in building and site improvements and delegation of permit approvals for these improvements to the Executive Director was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines.

In July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an Environmental Impact Report ("EIR") for reuse of the OAB. On September 17, 2002, the Board of Port Commissioners ("Board"), acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In June 2012, the Board considered the 2012 OAB Project Initial Study/Addendum and adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP") with Resolution No. 12-76. The OAB EIR described projects to be developed by the Port on its portion of the former OAB, including interim leasing of property for ancillary maritime support and related site improvements as described in this agenda report. Therefore, no further or additional environmental review or documentation is necessary in order for the Board to take the actions recommended in this agenda report.

Tenant operations and construction of the proposed improvements are required to comply with applicable mitigation measures and standard conditions of approval in the adopted SCA/MMRP, which is available on-line:

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/s/ApplicationandZoningInformation/OAK042281>

All projects on the Economic Development Conveyance property at the former OAB must be completed in compliance with the September 27, 2002 Remedial Action Plan ("RAP") and Risk Management Plan ("RMP", which is Appendix E to the RAP) prepared for the State of California Department of Toxic Substances Control and the Oakland Base Reuse Authority which is available on-line:

http://www.envirostor.dtsc.ca.gov/public/final_documents2.asp?global_id=01970006&doc_id=5003117

In addition to complying with the SCA/MMRP and the RAP/RMP, the tenants should determine whether the proposed grading, paving and other work requires a Port Development Permit and other authorizations prior to undertaking the improvements.

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)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

The Owner Controlled Insurance Program (OCIP) and Professional Liability Insurance Program (PLIP) do not apply to the matters addressed by this Agenda Report as they are not capital improvement construction or design projects.

OPTIONS

- Extend and transfer of the Space Assignment Agreement from Industrial Railways Company to Capital Feed and Port Transfer, Inc. on the former Oakland Army Base (OAB) and approve approximately \$1.4 million in site improvements. This is the recommended option.
- Extend and transfer the Space Assignment Agreement under different terms than those stated in this Agenda Report.
- Do not authorize extension and transfer of the Space Assignment Agreement.

RECOMMENDATION

Staff recommends that the Board authorize the Executive Director to:

- Extend and transfer Space Assignment Agreement from Industrial Railways Company to Capital Feed and Port Transfer, Inc. on the former Oakland Army Base (OAB).
- Approve approximately \$1.4 million in site and building improvements to be performed by the tenants and paid for by the Port via rent credits; and
- Approve permits for the site and building improvements.