

AGENDA REPORT

Ordinance: Authorize the Executive Director to Extend a Rent-Free Temporary Rental Agreement with O.C. Jones and Sons, Inc., Associated with the Expansion of the Berths 25-33 Marine Terminal, through June 30, 2018. **(Maritime)**

MEETING DATE: 11/30/2017

AMOUNT: \$0

PARTIES INVOLVED: O.C. Jones and Sons, Inc. (Rob Layne, President and CEO)
TraPac, LLC (Frank Pisano, President)

SUBMITTED BY: John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

Staff requests approval from the Board of Port Commissioners ("Board") to delegate authority to the Executive Director to extend a rent-free Temporary Rental Agreement ("TRA") with O.C. Jones and Sons, Inc. ("O.C. Jones"), for activities associated with the expansion of the Berths 25-33 Marine Terminal, which is leased and operated by TraPac, LLC ("TraPac"). The extension would result in a TRA with a duration greater than one year, which requires Board approval.

BACKGROUND

In October 2016, the Port entered into a Non-Exclusive Preferential Assignment Agreement ("NEPAA") with TraPac for an expanded marine terminal comprising Berths 25-33 (herein referred to as the "Premises"), which includes over \$55 million of improvements. In January 2017, TraPac began the first phase ("Phase 1") of development, for the construction of its new entrance gate. The second phase ("Phase 2"), covering the rest of the terminal, began in November 2017. The areas undergoing construction are scheduled to be operational by June 30, 2018. This represents an approximate 10-month delay to the original construction schedule. O.C. Jones is TraPac's prime contractor for both phases of work.

Before the start of Phase 1, TraPac and O.C. Jones requested from the Port a temporary area to stockpile equipment and excavated materials, and to serve as a "laydown" site for the Phase 1 construction. For this purpose, on December 28, 2016, the Port and O.C. Jones entered into a TRA, at no cost, for an approximate 6-acre site east of TraPac's

Premises (Exhibit A). The TRA was set to expire on March 31, 2017, but was extended (and slightly expanded) through December 27, 2017 (for a total of 12 months) to accommodate Phase 2 construction.

Given significant delays with the construction schedule, in May 2017, TraPac has requested to further extend the TRA with O.C. Jones (still at no cost) through June 30, 2018. This extension would coincide with the revised substantial completion date of the Phase 2 work.

ANALYSIS

Staff believes that extending the TRA with O.C. Jones through June 30, 2018 is critical to the timely completion of TraPac's construction, and is thus important and justified. Under the terms of this proposed extension, O.C. Jones must continue to follow the Port's soil management and environmental protocols as it relates to material stockpiling, as well as all other provisions under the TRA. The location of the 6-acre TRA limits the area's utility and revenue generation potential associated with potential alternative purposes. For this reason, Staff also supports waiving any fees or rent during the term of the TRA.

BUDGET & STAFFING

The proposed action is not expected to have a budget or staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The proposed action falls within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do apply to this action.

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 B: Objective 1: Retain existing customers and tenants.

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 O.C. Jones employs 21 or more employees working on Port-related work and the tenancy agreement is greater than \$50,000.

ENVIRONMENTAL

CEQA Determination: the proposed extension of the TRA with O.C. Jones is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, Section 15301, 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 relates to an existing approved project that was found to conform to the General Plan; therefore, a new 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 Port capital improvement construction project.

OPTIONS

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

1. Authorize the Executive Director to extend the TRA with O.C. Jones, as described herein. This is the recommended action.
2. Approve Option 1 (above) but require O.C. Jones to pay rent or a fee for the extended term of the TRA, as may be determined by the Board.
3. Do not authorize the Executive Director to extend a TRA with O.C. Jones, as described herein. Under this option, O.C. Jones would not be able to use the TRA site for construction laydown or material stockpiling past December 28, 2017.

RECOMMENDATION

Staff recommends that the Board authorize the Executive Director to extend an existing Temporary Rental Agreement with O.C. Jones and Sons, Inc., for the purpose of construction-related staging/laydown and stockpiling excavated materials, through June 30, 2018 for an approximate 6-acre area at no cost to O.C. Jones and Sons, Inc.

Exhibit A

Location of TRA with O.C. Jones

