

AGENDA REPORT

Ordinance: Authorization to (1) Extend a Space Assignment Agreement with TraPac, LLC for Approximately Twenty-Four Acres, and (2) Extend a Temporary Rental Agreement with O.C. Jones and Sons, Inc., for Approximately Six Acres to support TraPac's Terminal Redevelopment, both Within the Outer Harbor Terminal, for up to an Additional Nine Months Beyond the Current Expiration of June 30, 2018, and Resulting in Minimum Net Revenue of \$788,000. **(Maritime)**

MEETING DATE: 6/28/2018

AMOUNT: \$924,365 minimum (FY 2018-19)
Revenue

\$136,365 (One-Time) (FY 2018-19)
Expense

PARTIES INVOLVED: TraPac, LLC (Stephen Edwards, President)
O.C. Jones and Sons, Inc. (Rob Layne, President/CEO)

SUBMITTED BY: John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

Port of Oakland ("Port") staff is seeking to: (1) extend a space assignment agreement with TraPac, LLC ("TraPac") at Berth 24 that commenced on June 18, 2017 and currently terminates on June 30, 2018; and (2) extend a temporary rental agreement ("TRA") with O.C. Jones and Sons ("O.C. Jones") that commenced on December 28, 2016 and currently terminates on June 30, 2018, which support's TraPac's terminal expansion project. Both agreements were set to be co-terminus with the completion of TraPac's expansion. Because construction is now scheduled to go well past June 2018, Port staff ("Staff") is seeking approval from the Board of Port Commissioners ("Board") to grant authority to the Executive Director to extend the space assignment and the TRA up to an additional nine months (through March 31, 2019).

BACKGROUND

In October 2017, the Port entered into a 14-year lease with TraPac for expanded marine terminal operations on 123 acres (Berths 25-33), herein referred to as the "Lease." Since January 2017, TraPac has been constructing improvements associated with the Lease, which have rendered large portions of its leasehold inoperable. To minimize disruptions to

its operations, TraPac entered into a space assignment agreement with the Port for 24 acres at the adjacent Berth 24 terminal ("Berth 24 Agreement"). Space assignments are short-term agreements for property that is not currently being leased on a long-term basis (thus allowing the Port to earn revenue while still ensuring that the land is still readily available for development). Should a space assignment agreement extend longer than one year or should certain standard terms be modified, Board approval is required. Because the Berth 24 Agreement was for 13 months, the rate was negotiated, and certain standard terms were modified, Board approval was required. The Board approved the Berth 24 Agreement in May 2017; it will expire on June 30, 2018.

Separately, the Port and O.C. Jones entered into a TRA, at no cost, for an approximate 6-acre site east of TraPac's leasehold to temporarily stockpile equipment and excavated materials, and serve as a "laydown" site for construction. TRAs are short-term agreements that are subject to Board approval should the term extend past one year or should certain standard terms be modified. Although the initial TRA was for 12 months, OC Jones requested an additional six-month extension (for a total term of eighteen months). The Board approved the TRA extension, with \$0 rent, in May 2017; it is set to expire on June 30, 2018.

ANALYSIS

Both the Berth 24 Agreement and TRA were set to expire at the completion of TraPac's construction, which was scheduled for June 30, 2018. Construction has been further delayed since the Berth 24 Agreement and TRA were executed, with substantial completion now scheduled for mid-November 2018.

Berth 24 Agreement

TraPac has requested continued use of the Berth 24 property on a month-to-month basis during on-going construction. Separately, due to a complaint filed with the Occupational Safety and Health Administration, TraPac recently performed some "emergency" pavement repairs at the property (without prior formal Port approval) in the amount of \$136,365, which it has requested the Port reimburse. Staff have tentatively agreed to the reimbursement if TraPac commits to extend its tenancy through October 31, 2018. TraPac has agreed.

TraPac pays the Port approximately \$225,000 per month as fixed rent under the Berth 24 Agreement. Starting July 1, 2018, rent would increase to approximately \$231,000 per month, for net rent over a four-month period of approximately \$788,000 (\$924,000 rent less \$136,365 Port reimbursement). Rent during the extended term would be based on a 3% increase to the current rate, plus a lighting assessment (i.e., rate of \$0.211/sf/mo and assessment of \$0.01/sf/mo).

No other changes to the Berth 24 Agreement are proposed. TraPac remains prohibited (unless expressly authorized by the Port) from: (a) conducting any excavation on the premises that would breach the surface of the premises and expose the underlying soil; and, from (b) otherwise excavating any soil from the premises. Furthermore, should TraPac

perform such activities without Port approval, TraPac would then be directly responsible for any environmental costs resulting from those activities.

Given the significant additional revenue that the extension will provide to the Port and the critical acreage this provides to TraPac to minimize disruptions to its operations, Staff recommends the requested extension to the term of the Berth 24 Agreement through October 31, 2018. Staff also recommends the reimbursement of TraPac's pavement costs described herein based on TraPac's commitment to a four-month extension. Further, while TraPac's current construction schedule indicates substantial completion of its improvements by mid-November 2018, Staff believes it prudent to request an extension through March 31, 2019 should TraPac opt to continue leasing the premises after October 31, 2018 on a month-to-month basis.

TRA

Staff believes that extending the TRA with O.C. Jones through at least October 31, 2018 is critical to the completion of TraPac's construction. Construction delays include, but are not limited to, encountering unforeseen field conditions, complications with securing necessary permits/approvals and technical difficulties with the opening of the new entrance gate – all of which have led to an increase in time and cost. Staff believes that TraPac is diligently working towards the completion of construction, particularly as TraPac is required under the Lease to pay full rent on its premises starting on July 1, 2018 (about \$14 million in FY 2018-19).

Under the terms of the 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. It should also be noted that the location of the six-acre TRA limits the area's utility and revenue generation potential. For this reason, Staff also supports the continuation of waiving any fees or rent during the extended term. However, should TraPac still need the area past October 31, 2018, TraPac's continued occupancy of the area would be at Tariff rates (for reference, 6 acres at current Tariff rate is about \$52,000/month). TraPac understands and agrees with these terms.

Staff is requesting an extension to the TRA through March 31, 2019, with waiver of rent and fees for the period July 1 – October 31, 2018.

BUDGET & STAFFING

For FY 2018-19, the Maritime Division did not budget any additional revenue from the Berth 24 Agreement based on the assumption that TraPac would vacate the premises by June 30, 2018. Therefore, if approved, the proposed term extension to the Berth 24 Agreement would result in minimum incremental net revenue of \$788,000 in FY 2018-19.

The Maritime Division also did not assume any revenue for the TRA in FY 2018-19. The proposed term extension for the TLA would not result in any change, assuming TraPac vacates the site by October 31, 2018.

The proposed actions are not expected to have an impact on staffing.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The proposed work described in this Agenda Report 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. Should handling testing and disposal of contaminated material and remediating services be required, MAPLA will apply to the extent the work is within the craft jurisdiction of the unions’ signatory to the MAPLA, such as any field surveying, on-site soils and materials test, and inspection.

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: Improve Customer Service

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 the proposed extension to the B24 Agreement and the TLA as the tenant employs 21 or more employees working on Port-related work and the tenancy agreement is greater than \$50,000. In addition, for any future construction work under the Berth 24 Agreement, prevailing wage requirements will apply.

SUSTAINABILITY

The extension of the B24 Agreement and the TRA does not involve any proposed development for the leased areas. If either tenant decides to develop the site in the future, that tenant must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

The proposed extension of the B24 Agreement and the TLA is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to the Port CEQA Guidelines, Section 15301(p), 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. Extending the B24 Agreement and the TLA for TraPac to continue its current business operations meets the criteria for this exemption.

GENERAL PLAN

These actions do 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 options for the Board's consideration:

1. Approve and authorize the Executive Director to extend the Berth 24 Agreement and the TLA up to an additional nine months, through March 31, 2019, as described herein.
This is the recommended action.
2. Approve an extension to the Berth 24 Agreement and the TLA under different terms and conditions than those described herein, as may be directed by the Board.
3. Do not approve an extension to the Berth 24 Agreement and TLA as described herein. Under this option:
 - a. The Port can extend the Berth 24 Agreement through only July 17, 2018, based on prior Board approval of an approximate 13-month term. After that time, TraPac must vacate the premises. Under this option, the Port would not reimburse TraPac for pavement maintenance.
 - b. TraPac must vacate the TLA premises by June 30, 2018.

RECOMMENDATION

Staff recommends that the Board approve an ordinance approving and authorizing the Executive Director to execute an amendment to:

- The Space Assignment Agreement with TraPac, LLC, for approximately 24 acres at the Outer Harbor marine terminal, with the following amendments:
 - Term extension of up to nine months, commencing on July 1, 2018 and terminating on March 31, 2019;
 - Rate of \$0.211 per square foot per month plus \$0.01 per square foot per month for lighting assessment; and
 - A reimbursement to TraPac, LLC of \$136,365 in FY 2018-19 for pavement repairs.

- The Temporary Rental Agreement with O.C. Jones and Sons, Inc. for approximately 6 acres at the Outer Harbor Terminal to temporarily stockpile equipment and excavated materials with the following amendments:
 - Term extension of up to nine months, commencing on July 1, 2018 and terminating on March 31, 2019;
 - Waivers of fees and rent through October 31, 2018; and
 - Application of then-current Tariff rates starting on November 1, 2018.