

AGENDA REPORT

Ordinance: Authorize the Executive Director to Execute a Lease with ConGlobal Industries, LLC, for a Term Extending Through June 30, 2023, Resulting in Annual Rent Ranging From Approximately \$1.7 Million to \$2.1 Million; and Authorize \$76,331 for a One-Time Rent Credit and \$1.0 million for Certain Pavement Improvements. **(Maritime)**

MEETING DATE: 3/28/2019

AMOUNT: Average \$1.9 million per year (FY 2020 through FY 2023)
Revenue

\$76,331 (FY 2020)
Operating Expense

\$1.0 million (FY 2021-FY 2022)
Capital Expenditure

PARTIES INVOLVED: ConGlobal Industries, LLC; Darien, IL
Peter L. Strohla, Senior VP Depot Operations

SUBMITTED BY: John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

ConGlobal Industries, LLC, currently leases approximately 14.6 acres of yard space in the Port's Maritime Area, under a month-to-month agreement with the Port. Port staff have negotiated terms for a 4-year lease, that would extend through June 30, 2023, generating an annual rent ranging from approximately \$1.7 million to \$2.1 million, and resulting in the expenditure of \$76,331 for a one-time rent credit and \$1 million capital expenditure for certain pavement repairs and improvements.

BACKGROUND

ConGlobal Industries, LLC (ConGlobal), is a Port tenant who operates a chassis, container, and refrigerated unit support yard on 14.6 acres located at 555A Maritime Street in the Port's Maritime Area (Seaport). Please see the site map attached as Exhibit A. ConGlobal has been

a tenant at this location since 2010 under a month-to-month Space Assignment agreement. Beginning in August 2018, ConGlobal and Port staff began negotiating for a longer-term lease.

ANALYSIS

ConGlobal currently pays the Port \$157,114 per month and performs basic pavement maintenance under its month-to-month agreement. ConGlobal wants a longer-term lease with the Port for business stability, and is willing to help the Port share in the cost of important pavement repairs and improvements. ConGlobal and Port staff have agreed on a 4-year lease for the subject property, with key terms as summarized in Exhibit B. Highlights include the following:

- Premises are the currently occupied area: 635,784 square feet (14.6 acres).
- Effective Date is June 1, 2019.
- Expiration Date is June 30, 2023.
- No options to extend. However, there is a conditional negotiating opportunity beginning on July 1, 2022 should another Port tenant decline its exclusive negotiating right for the Premises.
- Starting June 1, 2019, the Fixed Monthly Rent is \$141,780, or about \$1.7 million annualized.
- Rent escalates 5% at the beginning of each contract year (July 1), starting July 1, 2019. Therefore, on July 1, 2019, Fixed Monthly Rent will be \$148,869 monthly or about \$1.8 million annually.
- ConGlobal will receive a one-time rent credit in the amount of \$76,331, which provides partial reimbursement of a rent increase that became effective during the latter part of negotiations of the proposed Lease.
- ConGlobal would be required to make certain necessary pavement repairs and improvements no later than December 31, 2020, at an estimated cost of \$1.6 million. The Port would reimburse ConGlobal 50% of the cost incurred, up to a maximum of \$1 million.
- ConGlobal remains responsible to maintain the Premises, including pavement.

While the proposed terms result in a modest reduction from current rent, the Port benefits from a 4-year fixed revenue commitment, fixed annual rent increases, and repairs/improvements to existing pavement, as further detailed herein. Over the proposed 4-year lease term, considering the cost-share for the pavement work, staff expects revenue to be about equal to what it would have been under a continuation of the month-to-month agreement.

BUDGET & STAFFING

The proposed Lease with ConGlobal will result in estimated revenues as detailed below (current FY 2019 revenues are provided for comparison). These revenues will be included in the upcoming FY 2020 Operating Budget

Related to the proposed Lease, Port staff has agreed to provide a one-time rent credit of \$76,331 and to reimburse ConGlobal up to \$1.0 million for certain pavement work, as discussed above. Staff anticipates incurring these costs in FY 2020 through FY2022. Refer to Table 1.

Table 1. Rent, Expenses, and Net Cashflow*

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	TOTAL (FY19-FY23)
Rent	\$141,780	\$1,786,426	\$1,875,747	\$1,969,535	\$2,068,011	\$7,841,499
Rent Credit	-	(\$76,331)	-	-	-	-
Reimbursement for Pavement Work (Cap Ex)	-	-	(\$500,000)	(\$500,000)	-	-
Net Cashflow	\$141,780	\$1,710,095	\$1,375,747	\$1,469,535	\$2,068,011	\$6,765,168

* The new lease would be effective June 1, 2019; therefore, only one month of rent under the new lease is collected in the current fiscal year, as shown above. However, for the whole of FY 18-19, Staff expects to collect rent revenue of \$1.73 million.

The proposed action does not have any staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The action to enter into a lease with ConGlobal 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 the lease exceeds the thresholds required for coverage under the MAPLA, the provisions of MAPLA will apply to that work.

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: Modernize and Maintain Infrastructure

LIVING WAGE

Based on the proposed Lease and information provided by the Agenda Report, living wage requirements may apply to these agreements because the agreement is 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.

SUSTAINABILITY

ConGlobal has not proposed any development in the leased area. However, the proposed Lease incorporates the updated “Environmental Responsibilities” Exhibit, which requires ConGlobal to adhere to any Maritime Air Quality Improvement (MAQIP) 2020 and Beyond Plan requirements including but not limited to, 1) providing annual equipment and operational data for emissions inventories, 2) meeting with Port staff annually to evaluate feasibility of using zero-emissions equipment, and 3) participate in pilot projects of new zero-emission equipment.

ENVIRONMENTAL

The proposal to authorize the Executive Director to enter into a lease agreement with ConGlobal for its facility at 555A Maritime Street was reviewed in accordance with the requirements of the California Environmental Quality Act (“CEQA”) and the Port CEQA Guidelines. The proposed Lease is categorically exempt from 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. Furthermore, the proposed pavement repairs and improvements are categorically exempt from CEQA pursuant to Section 15301, which exempts maintenance and repairs involving no expansion of use.

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)

This action is not subject to the Port’s Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

Staff has identified the following three options for the Board’s consideration:

1. Authorize the Executive Director to execute a lease with ConGlobal, as described herein.
2. Authorize the Executive Director to execute a lease with ConGlobal under different terms than those stated in this Agenda Report.
3. Do not authorize the Executive Director to execute a lease with ConGlobal, and direct staff to pursue alternative uses of the subject property, including but not limited to allowing ConGlobal to continue leasing the lease premises on a month-to-month basis.

RECOMMENDATION

Staff recommends that the Board authorize (a) the Executive Director to execute a Lease with ConGlobal Industries, LLC, extending the term through June 30, 2023, resulting in annual rent ranging from approximately \$1.7 million to \$2.1 million; and (b) the expenditure of \$76,331 for a one-time rent credit; and (c) a capital expenditure of \$1 million for certain pavement work performed by ConGlobal and partially reimbursed by the Port, all as described herein.

Exhibit A

Premises for ConGlobal Industries, LLC



Exhibit B

Summary of Proposed Key Terms for ConGlobal Industries, LLC

Effective Date	<ul style="list-style-type: none">• June 1, 2019.
Rent	<ul style="list-style-type: none">• Starting on June 1, 2019, the Fixed Monthly Rent is \$141,780.• ConGlobal to receive a one-time rent credit in the amount of \$76,331 by December 31, 2019.
Rate Escalations and Contract Year	<ul style="list-style-type: none">• The Fixed Monthly Rent increases by 5% annually on July 1 of each Contract Year, starting July 1, 2019.• The Contract Year is defined as the 12-month period beginning on July 1 of a calendar year and ending on June 30 of the immediately succeeding calendar year.
Leasehold	<ul style="list-style-type: none">• The Premises is 635,784 square feet (14.6 acres).
Lease Term and Conditional Negotiating Opportunity	<ul style="list-style-type: none">• June 1, 2019 through June 30, 2023.• Conditional Negotiating Opportunity: Beginning on July 1, 2022, ConGlobal has rights to exclusively negotiate terms to extend lease should another Port tenant decline its exclusive negotiating right for the Premises.
Maintenance, Repairs, and Improvements	<ul style="list-style-type: none">• ConGlobal remains responsible to maintain existing facility and pavement within Premises.• ConGlobal must maintain pavement in accordance with the provided schedule.• By December 31, 2020, ConGlobal must make all necessary pavement repairs and improvements within Area A as identified in ConGlobal Pavement Condition Survey dated December 7, 2018. Total estimated repair cost is \$1,600,000.• Port to reimburse ConGlobal for 50% of the actual costs it incurs for pavement work, up to a maximum of \$1,000,000, in two equal payments.• Port will make payment #1 to ConGlobal within 90 days of pavement repair completion.• Port will make payment #2 to ConGlobal within 365 days of pavement repair completion.
Security Deposit	<ul style="list-style-type: none">• Three (3) months Fixed Monthly Rent.• Deposit shall be evidenced by cash, irrevocable letter of credit, or similar instrument acceptable by the Port.

Delinquency Charge	<ul style="list-style-type: none"> • If unpaid, Fixed Monthly Rent will become delinquent if the Port does not receive it on or before the tenth (10th) day of each month. • Delinquency charge of 0.06% per day.
Air Quality	<ul style="list-style-type: none"> • Port's standard "Environmental Responsibilities" Exhibit which includes updated Air Quality requirements. The new provisions require ConGlobal to comply with current and future Federal and State laws. ConGlobal shall also adhere to current and future Port requirements including the Maritime Air Quality Improvement Plan (MAQIP) 2020 and Beyond Plan. Lastly, ConGlobal is committed to use best efforts to apply for grants to reduce emissions from its equipment, work with the Port to test new technologies to enhance efficiency and emission reduction, and continue to work closely with the Port to inventory emissions from existing equipment and develop strategies for low to zero emission implementation.