

## AGENDA REPORT

**Ordinance:** Approve and Authorize the Executive Director to Execute a Second Amendment to a License & Concession Agreement with Transfer Case Express, Inc. for the Premises Located at 1285 Embarcadero Road, Oakland **(CRE)**

**MEETING DATE:** 3/28/2019

**AMOUNT:** \$0

**PARTIES INVOLVED:** Transfer Case Express, Inc.

**SUBMITTED BY:** Pamela Kershaw, Director of Commercial Real Estate

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

This report is a request for authorization to approve a Second Amendment to an existing License & Concession Agreement (“Agreement”) with Transfer Case Express, Inc. to allow for a sublicense of a portion of the premises to Afterguard Sailing Academy and delete an extension option.

### **BACKGROUND**

The existing Port-owned property at 1285 Embarcadero Road, Oakland consists of the following components: approximately 900 sq. ft. of office space, 4,586 sq. ft. of warehouse space, and approximately 6,441 sq. ft. of paved and fenced land (“Premises”). The Premises is currently occupied by Transfer Case Express, Inc. (“Tenant”), a company that sells manufactured and remanufactured American transfer cases, a part found in four-wheel drive vehicles. The Tenant has occupied the Premises under a License and Concession Agreement since March 1, 2014, and the Agreement was extended by a First Amendment dated May 1, 2016 which expires on April 30, 2021, with an option to extend for an additional five (5) years. A site plan and map indicating the location of the premises is attached as Exhibit A to this report.

### **ANALYSIS**

The Tenant approached the Port in December 2018 expressing a desire to relocate their main business operations from the Premises to another state, and use only a portion of the space for storage and shipping of their equipment. The Tenant requested approval to sub-license about 70% of the premises to Afterguard Sailing Academy (“Afterguard”), who will utilize the space for maritime education for sailboat operation and safety, and related ancillary administrative purposes, and plans to eventually expand into the entire space as business grows. While the

current Tenant is phasing out their use of the space, the proposed sub-licensee intends to keep the space physically occupied with an active tidelands trust-compliant use on the Premises. Due to the limitations of the permitted uses outlined in the Agreement, an amendment is needed to allow this type of use and permit a sublicense arrangement. The proposed Second Amendment will allow the Tenant to sub-license to Afterguard and will approve the use of the Premises by Afterguard, and will also eliminate an option to extend the Agreement, which will expire on April 30, 2021, after which time the Port would need to enter into a new agreement solely with Afterguard should they wish to remain on the Premises beyond 2021. The current Tenant will remain responsible for all obligations under the Agreement until the expiration of the term in 2021.

Staff believes that the proposed amendment will result in the continued occupancy of this space which will deter potential theft and vandalism of the Premises, and that the proposed subtenant is an appropriate and beneficial trust-consistent use for this existing asset. Based on the analysis above, staff recommends approval of the proposed Second Amendment to the License and Concession Agreement, based upon the terms and conditions stated within this Agenda Report.

### **BUDGET & STAFFING**

The proposed action does not have any budget or staffing impact.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The work performed under this contract is in the Port's Commercial Real Estate area and is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA). Therefore, the provisions of the MAPLA do not apply to this 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: Improve Customer Service
- Goal: Serve Our Community

### **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"), do not apply to this matter because tenancies outside of the Aviation and

Maritime areas with entities that do not principally provide aviation or maritime services are excluded from the Living Wage Regulations.

## **SUSTAINABILITY**

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.

## **ENVIRONMENTAL**

CEQA Determination: This action has been determined to be categorically exempt from requirements of the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

## **GENERAL PLAN**

The project appears to conform to the policies of the General Plan. The project is within City of Oakland planning jurisdiction, and they will make an official finding as part of any necessary zoning approval.

## **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**

- Approve the proposed Second Amendment to the existing License & Concession Agreement with Transfer Case Express, subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not approve the proposed Second Amendment to the existing License & Concession Agreement with Transfer Case Express.

## **RECOMMENDATION**

It is recommended that the Board approve and authorize the Executive Director to execute the proposed Second Amendment to the existing License & Concession Agreement with Transfer Case Express, Inc., located at 1285 Embarcadero Road, Oakland, and execute such additional documents as may be necessary to consummate the transaction contemplated in this Agenda Report, subject to approval by the Port Attorney as to form and legality. It is further recommended that if the subject Second Amendment to the License & Concession Agreement is not fully executed within 60 days of the Board's approval, such approval shall be null and

void unless further extended at the sole and absolute discretion of the Executive Director or his designee.

Attachments: Exhibit A – Site Map