

## AGENDA REPORT

**Ordinance:** Approval of a Second Amendment to Lease with Cool Port Oakland DRE, LLC, for the Development and Operations of a Temperature Controlled Logistics Facility to Modify Land Boundaries, Tenant Access and Other Terms **(Maritime)**

**MEETING DATE:** 5/23/2019

**AMOUNT:** \$0

**PARTIES INVOLVED:** Cool Port Oakland DRE, LLC (Kevin Marchetti, President)

**SUBMITTED BY:** John C. Driscoll, Director of Maritime

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

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY:**

Cool Port Oakland DRE, LLC currently leases approximately 25 acres of land in the Port's Maritime area (Seaport) for the development and operation of a temperature controlled transload facility. The lease agreement, executed in November 2015, was first amended in December 2016. Port staff is now proposing a second amendment to reflect minor land boundary modifications, address rail and roadway access, and align fixed rent and other terms to the Port's fiscal year (July-June) to simplify lease administration.

## **BACKGROUND**

On November 5, 2015, the Port of Oakland ("Port") executed a long-term lease for 66 years ("Lease") with Cool Port Oakland DRE, LLC ("Cool Port") for the development and operation of an approximately 280,000 square foot temperature controlled transload facility in the Seaport, at 575 Maritime Street ("Facility"). On December 22, 2016, the Lease was amended to modify land boundaries and delinquency charges ("1<sup>st</sup> Amendment"). In May 2017, Cool Port took possession of the property and began development of the Facility. Construction ended in October 2018 and operations started in November 2018.

With the commencement of operations at the Facility, Port Staff has identified some desirable amendments to the Lease to address (a) rail access/operations in areas leading to but located outside the Cool Port leasehold; (b) minor modifications to leasehold boundaries to accommodate new adjacent tenancies; and (c) clarification of contract years for the purpose of administering the Lease efficiently.

## **ANALYSIS**

The proposed modifications to the Lease (herein referred to as the “Proposed 2<sup>nd</sup> Amendment”) are detailed below.

### **Modification of Lease Premises**

Cool Port’s neighboring tenant, ConGlobal Industries, LLC (“ConGlobal”), recently entered into an approximately five-year lease with the Port; previously ConGlobal was on a month-to-month agreement. To facilitate access into ConGlobal’s yard, Cool Port agreed to slightly modify its land boundaries at the northeastern corner of the leasehold. This modification results in a Cool Port leasehold reduction of approximately 0.07 acres (3,000 square feet). Staff supports this modification as the reduction does not result in any financial or other material impact to the Lease, and directly benefits ConGlobal by improving vehicle circulation to its leasehold.

### **Alignment of Lease Year, Monthly Rent, and FMV Adjustment to Contract Year**

Staff proposes to amend language in the Lease to: (i) align lease year (“Lease Year”) with contract year (“Contract Year”); (ii) align Lease Year and Contract Year with the Port’s fiscal year, which runs July – June; and (iii) align annual fixed rent with the Contract Year, which is now proposed to be the Port’s fiscal year per (ii). Having different Lease terms tied to different years causes needless confusion during Lease administration, and both parties agree that streamlining administration is highly desirable.

While these modifications will result in some minor timing variations to revenue (as compared to current Lease terms) over the next two years, total net fixed rent over the Lease term will remain unchanged (see Budget and Staffing section for more detail). These proposed modifications have no impact on variable rent (“Variable Rent”) terms.

### **Access Over Private Roadways**

The Proposed 2<sup>nd</sup> Amendment also includes new provisions granting Cool Port a non-exclusive easement to use the Port’s private roads in the Seaport for vehicular access to and from the Cool Port leasehold. These new provisions address Cool Port’s recent concern that future adjustments to Port-owned (‘private’) roadways could impact access to the Facility. Staff notes that similar language has been used on other recent Port leases to address similar tenant concerns, for example the lease with Centerpoint-Oakland Development I, LLC.

### **Access to Rail Infrastructure**

Lastly, the Proposed 2<sup>nd</sup> Amendment grants Cool Port limited and non-exclusive rights to enter land directly outside its leasehold to use shared rail infrastructure leading to its Facility (“Rail Access Area”). Such access is only for the purposes of conducting rail operations (such as unit car switching) and emergency rail repair work. Before accessing the Rail Access Area, Cool Port must obtain permission and approval by the Port. The intent of this non-exclusive rail access language is to provide Cool Port greater flexibility to rail damage that may be caused by its operations, as well as better protect the Port when the tenant is performing work outside its leasehold.

## **BUDGET AND STAFFING**

The proposed action to align fixed rent with the Port's fiscal year does not impact revenue. In FY 2019-20 and FY 2020-21, fixed rent from Cool Port will be lower and higher by \$80,000, respectively, resulting in a net neutral impact to fixed rent. There are no other impacts to fixed (or variable) rent in future years. The proposed action does not have any staffing impact.

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

The Port of Oakland Maritime and Aviation Project Labor Agreement ("MAPLA") does not apply to the proposed action because it does not include any work that is part of the Port's Capital Improvement Program.

## **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

## **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 agreement as the tenancy agreement is not expected to generate greater than \$50,000 in payments to the Port over the term of the tenancy agreement. However, the tenant will be required to certify that should living wage obligations become applicable, the tenant shall comply with 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 presents sustainability opportunities.

## **ENVIRONMENTAL**

This Proposed 2<sup>nd</sup> Amendment was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. Lease amendments are categorically exempt from CEQA pursuant to Section 15301(p) of the Port CEQA Guidelines, which exempts renewals, extensions or amendments to leases or license and concession agreements or the execution of 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. The minor boundary alterations will allow existing tenants to continue their seaport-related operations in a more efficient manner. Aligning rent terms to a Fiscal Year, allowing the tenant access over Port private roadways and other proposed modifications are not subject to CEQA pursuant to Section 15061(b)(3), which states that CEQA applies only to activities that have a potential for causing a significant effect on the environment.

## **GENERAL PLAN**

The proposed 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 three options for the Board’s consideration:

1. Approve this Proposed 2<sup>nd</sup> Amendment to the Lease with Cool Port as described in this Agenda Report. This is the recommended option.
2. Approve this Proposed 2<sup>nd</sup> Amendment to the Lease with Cool Port under different terms and conditions as described in this Agenda Report.
3. Do not approve this Proposed 2<sup>nd</sup> Amendment to the Lease with Cool Port.

## **RECOMMENDATION**

Staff recommends that the Board adopt an ordinance and authorize the Executive Director to execute a 2<sup>nd</sup> Amendment to the Lease with Cool Port Oakland DRE, LLC, to modify leasehold boundaries, clarify tenant access rights and responsibilities for Port-owned roads and rail infrastructure, modify the definitions of Contract and Lease Years to align with the Port’s fiscal year, and align rent with these new definitions, all as further described herein.