BOARD MTG. DATE: 6/13/13

SUPPLEMENTAL AGENDA REPORT

TITLE: Authorization to Enter Into Space Assignment Agreements with Tenants in the 800 Series Buildings on the Former Oakland Army Base, and For Related Actions and Negotiate and Execute Various Temporary and Permanent Easements and Leases Between the City and the Port

AMOUNT: $9.8 - $10.7 million total (gross) rent revenue
$3.~~1~~ 2 - $3.9 million capital expenditures
$2.2 million rent credits

PARTIES INVOLVED:

Corporate Name/Principal	Location
Impact Transportation LLC / Ron Cancilla	Oakland, CA
Industrial Railways Company / Chris Stotka	Oakland, CA
Pacific Coast Container / Abdel Zaharan	Oakland, CA
Port Transfer Inc. / Mark Menezes	Oakland, CA
City of Oakland / Deanna Santana	Oakland, CA

TYPE OF ACTION: Ordinance and Resolution

SUBMITTED BY: Jean Banker, Director of Maritime (Acting)

APPROVED BY: Deborah Ale Flint, Executive Director (Acting)

SUMMARY

~~Negotiations over the "notch" lease and related property transactions at the OAB property are on-going. If these negotiations result in changes to the information contained in this Agenda Report, staff will supplement this Report in advance of the June 13, 2013 Board meeting.~~

There are currently four tenants located in the 800 series buildings at the former Oakland Army Base (OAB), that serve Port maritime customers. These buildings straddle the property boundary between City-owned and Port-owned OAB property. The four tenants are: Impact Transportation (IT), Industrial Railways Company (IRC), Pacific Coast Container (PCC) and Port Transfer Inc. (PTI) (collectively, the "Current Tenants"). IT and PCC are currently located in City-owned portions of the buildings and have been given eviction notices by the City that were effective as of May 31, 2013, and have since been delayed to June 15, 2013. The other two tenants (IRC and PTI) are located in the Port-owned portions of the buildings.

In March 2013, the Board of Port Commissioners (Board) adopted a resolution and an ordinance authorizing leases with the Current Tenants as part of an interim leasing program, but that authorization was contingent upon the Port's ability to lease from the City

a piece of OAB property known as the "notch." Due to time constraints and the Port's inability to get the "notch" lease from the City, Port staff has developed a solution for retaining the four tenants that does not require the "notch." Staff requires the Board's approval of this alternative solution, which would supersede the approvals previously granted in March 2013.

FACTUAL BACKGROUND

In June 2012, the City and the Port executed the Amended and Restated Cost Sharing Agreement for the Former Oakland Army Base (Cost Sharing Agreement), which identifies the roles and responsibilities as between the City and Port for development of each party's respective development elements for the redevelopment of the OAB site. Pursuant to the terms of the Cost Sharing Agreement, the City sent a letter to the Port on January 9, 2013 stating their intention to commence demolition of the 800 series warehouse buildings that straddle the property line between the Port and City owned portions of the OAB site ("shared buildings"). The Cost Sharing Agreement requires that each party provide the other with notice 180 days prior to commencement of demolition of these shared buildings. The Port sent a letter back to the City on February 7, 2013, stating the Port's desire to preserve portions of these same buildings located on Port owned property. Concurrently, the Port invited the Current Tenants located within these buildings to respond to a bid solicitation to enter into property rental agreements for the portions of the buildings that would be preserved.

As a result of this solicitation, on March 14, 2013, the Board authorized the Executive Director to execute Space Assignment Agreements with the Current Tenants for the Port-owned portions of the 800 series warehouse buildings pursuant to an interim leasing plan that depended on the Port's ability to lease the "notch." Just prior to approving the first reading of the ordinance on March 14, and again at the second reading of the Ordinance on March 28, 2013, the Board indicated that the approval of these Space Assignment Agreements was conditioned upon the Port obtaining all necessary leasehold rights to effectuate these Agreements from the City, including acquisition of the "notch" and other City lands, in exchange for the Port leasing certain Port lands to the City on the western side of the former OAB site, known as the West Gateway. On April 25, 2013, the Board authorized the Executive Director to enter into both the "notch" lease agreement and the West Gateway lease agreement with the City for these properties.

While staff from the Port and City have prepared execution ready leases for the "notch" and West Gateway properties, the City ~~has~~ recently indicated that it ~~is~~ was unable to execute the "notch" lease without obtaining consent from the City's Developer, precluding the ~~. Thus, as of the date of publication of this Agenda Report the Port has not received an executed "notch" lease from the City and cannot~~Port from entering ~~enter~~ into the Space Assignment Agreements as approved by the Board on March 28, 2013.

Since learning that the City ~~is~~ was unable to execute the "notch" lease, staff has analyzed the feasibility of reusing the 800 series buildings without the "notch." The loss of the "notch" means that the available square footage for the Current Tenants to relocate into Building

804 is reduced and, thus, the allocation of space among the Current Tenants needs to be adjusted to reflect this loss of available space.

Recently, as a result of several meetings with the City and its developer partner, a second alternative interim leasing scenario has become feasible, which includes the "notch." As a result, Sstaff has negotiated ~~a~~ two proposed alternative interim leasing programs with the Current Tenants:

- Alternative Program Option 1: Does not include the "notch" area
- Alternative Program Option 2: Allows the Port to retain the "notch" in Building 804, while exchanging various temporary and permanent easements between the City and Port as described in more detail in the term sheet and map attached as Exhibits C and D

ANALYSIS

The proposed key terms of the Alternative Program Option 1 are described below.

Proposed Location and Rent

Tenant	Location	Monthly Rent (warehouse)	Monthly Rent (yard space)	Total Rent over 30 months
IT	805/806/807	$78,408	$14,200 (6 months) $37,700 (24 months)	$3,342,240
IRC	804 (Bay 4/5)	$31,363	$48,500	$2,395,890
PCC	803	$78,408	$40,000	$3,552,240
PTI	804 (Bay 3)	$15,682	$0	$470,460
Total Gross Rent				$9,760,830
Rent Credits				$2,215,000
Port Improvements				$3,890,000
Net Cash Flows				$3,655,830

Rents are based on $0.33/sq ft for the warehouse space and $0.169/sq ft for the additional yard space, consistent with current Maritime Tariff (Tariff No. 2A) rates. The total gross rent shown above is approximately $0.4 million less (resulting from exclusion of the "notch" area) than was presented to the Board on March 14 and March 28, 2013. An illustrative map indicating the existing configuration of Current Tenants within the Port owned portion of the property, as well as a map indicating the proposed location of the Current Tenants pursuant to this alternative interim leasing program, are attached as Exhibits A and B to this report for reference purposes.

BOARD MTG. DATE: 6/13/13

The proposed key terms of the Alternative Program Option 2 are described below:

Proposed Location and Rent

Tenant	Location	Monthly Rent (warehouse)	Monthly Rent (yard space)	Total Rent over 30 months
IT	805/806/807	$78,408	$14,200 (6 months) $37,700 (24 months)	$3,342,240
IRC	804 (Bay 4/5)	$31,363	$48,500	$2,395,890
PCC	803 and 804 (Bay 3)	$94,090	$40,000	$4,022,700
PTI	804 (Bay 1/2)	$31,363	$0	$940,890
Total Gross Rent				$10,701,720
Rent Credits				$2,215,000
Port Improvements				$3,190,000
Net Cash Flows				$5,296,720

A map indicating the proposed location of tenants pursuant to Alternative Program Option 2 is attached as Exhibit E to this report for reference purposes.

Term

The term for each Space Assignment will be for 30 months beginning on July 1, 2013; and unless either party gives the other a written notice of termination 30 days prior to the expiration of the Space Assignment, each Space Assignment will continue on a month to month basis with a 30 day termination clause. Port staff recommends a 30 month term for the following reasons. First, the Port plans to redevelop this area for a future phase rail expansion and may require a portion of these lands within a few years. Second, the proposed new buildings being developed by the City of Oakland will likely be available for lease, potentially by the Current Tenants in two to three years, allowing these tenants to potentially move into new, Class A warehouse space built as part of the development program. Third, the improvements required to preserve and operate in these buildings requires a longer term commitment than a month to month agreement by both parties to ensure that the capital investment can be recovered over the term of the Space Assignment. Nonetheless, each Space Assignment will have an early termination provision at the sole discretion of the Port should the Port be in a position to commence Phase 2 of the rail project prior to the end of the 30 month term. This termination provision will include reimbursement to the Current Tenants of any remaining costs that would have been reimbursed via rental credits.

Because the Port will need the land for the Port's future development of rail facilities and the future development of other trade and logistics facilities, the Space Assignments do not allow for any holding over after (i) the minimum 30 month term and (ii) the expiration of 30 days from the Port's issuance of a 30 day written notice of termination. If any tenant holds over under such circumstances, they will be subject to liquidated damages to the Port of $10,000 per day. Additionally, each tenant will be required to expressly acknowledge and agree that their use and occupancy of their spaces is a temporary and interim use only, and each tenant expressly waives any rights to any relocation benefits.

BOARD MTG. DATE: 6/13/13

Port Improvements
In order to preserve the portions of the warehouses on Port property, certain structural modifications will have to be made to Buildings 804, 805, 806 and 807 before the City commences demolition of its portions of the buildings. Further, in order to provide access for one of the Current Tenants without the "notch," two bays of Building 804 must be demolished. Finally, the Building 802 foundation needs to be demolished. The cost of this work ("Port improvements") is estimated at $3.9 million. It remains imperative that the work to allow the relocation of the Current Tenants into the remaining buildings on Port property be completed as expeditiously as possible. Recent information from the City indicates that the Current Tenants must be relocated by the end of August 2013. In order to accomplish this, staff proposes to break out the work in separate "packages" as design is completed. In addition, staff also proposes to dispense with standard bid procedures and to solicit proposals for the different packages from our existing contractors or informal bids on the open market.

Alternative Program Option 2 does not require the partial demolition and new end wall construction in Building 804, saving the Port approximately $700,000 in building retention costs. The cost of Port Improvements under this Option is therefore estimated at $3.2 million. Additionally, under Option 2, the City proposes to fund and build a new rail spur benefitting both Port and City warehouses, which is estimated to cost approximately $1.5 million. The City, Port, and City's developer will coordinate on the design of the rail location, and the operation and maintenance of the rail will be performed pursuant to the Rail Access Agreement with the Rail Operator, as per the Cost Sharing Agreement (see Exhibit C).

Tenant improvements
All of the buildings require repairs before they can be utilized by each tenant. These repairs include utility repairs and replacement due to copper theft, as well as lighting, door repairs, roof repairs, office repairs, bathroom fixture replacement and fire system repairs. In addition to building repairs, there is a need to pave the Building 802 foundation area south of Building 803 following its demolition. All of these repairs are to be the responsibility of the tenant, who will be reimbursed by the Port via rental credits against their monthly rent until the earlier to occur of (i) the tenant is repaid its costs or (ii) the Space Assignment is otherwise terminated pursuant to its terms. Prior to commencing any such repairs, each tenant must prepare and submit to the Port's Chief Wharfinger a written description of the proposed work together with a cost estimate for such work and any other information that the Chief Wharfinger may require. Each tenant can only proceed with such repairs after the Chief Wharfinger has approved such work in writing. The Port estimates the repair and paving costs and resulting rental credits to be approximately $2.2 million, mostly applied in Fiscal Year 2014.

Security Deposit
A security deposit in the amount of 3 months rent will be required at the 6th month of term under the proposed Space Assignment Agreements. Receipt of the security deposit is being deferred due to the upfront tenant improvements that are being performed by the tenants, for which they will be receiving reimbursement in the form of rental credits.

BOARD MTG. DATE: 6/13/13

Benefits of Space Assignment Agreements

Under Alternative Program Option 1, ~~T~~the Space Assignment Agreements are anticipated to result in approximately a net positive cash flow to the Port of $3.7 million over 30 months. Equally importantly, the Agreements will result in the retention of four key businesses that serve maritime customers, and will preserve approximately 350 jobs in Oakland. The Port estimates that these warehouse businesses support approximately 5,000 TEUs of cargo activity per month; without these warehouses located in or near the Port there is a potential for some of this cargo to be diverted to other Ports.

Alternative Program Option 2 would result in a net positive cash flow to the Port of $5.3 million. The benefits of Alternative Program Option 1 would also apply.

Actions to be Taken if Space Assignment Agreements Are Not Approved

If the Board does not authorize ~~the~~ either Option 1 or Option 2~~Space Assignment Agreements~~, then staff will need to immediately terminate the existing tenant agreements for the Current Tenants in the Port-owned portions of the shared buildings in order to comply with the demolition notice provisions of the Cost Sharing Agreement, since the Port cannot be assured that the costs necessary for the Port to expend to stabilize and preserve these buildings will be recovered without having tenant commitments in place to rent these spaces.

~~Under this scenario~~In this case, Buildings 804, 805, 806 and 807 would have to be demolished (at a cost of approximately $3.6 million) to comply with the Cost Sharing Agreement, which requires that the Port have these buildings ready for the City to proceed with demolition by July 9, 2013. The only available building to rent (which is completely on the Port side of the property) would be Building 803. An RFP would need to be issued to maximize the value of this building. An interim leasing program limited to Building 803 will have an adverse impact on cargo activity and revenues associated with warehousing activities. Refer to the Budget and Financial Impact section of this Report for more information on the cash flow impact of this scenario.

STRATEGIC PLAN

Strategic Priority Area	Goal	Objective	How + When Implemented
Sustainable Economic and Business Development	**Goal A:** Create Sustainable Economic Growth For The Port And Beyond.	**1.** Maximize the use of existing assets	By entering into these interim leases, the Port is able to retain and increase revenue from Maritime properties.

BOARD MTG. DATE: 6/13/13

Sustainable Economic and Business Development	**Goal B:** Maintain And Aggressively Grow Core Businesses	**1.** Retain existing customers and tenants.	By entering into these interim leases, the Port is able to retain existing businesses supporting cargo activity through the Port.

BUDGET & FINANCIAL IMPACT

Under Alternative Program Option 1, ~~T~~the proposed Space Assignment Agreements will result in gross revenues of approximately $9.8 million over 30 months, and a net positive cash impact of $3.7 million over this period. ~~Not approving the Space Assignment Agreement will result in a net negative cash impact of $0.3 million over the same 30-month period.~~

	Space Assignments Approved under Alt. Program Option 1	If Space Assignments Not Approved
Gross Revenue (Rent)	$9.8m	$5.0m
Rent Credits	$2.2m	$1.7m
Capital Investment (Port improvements)	$3.9m	$3.6m
Net Cash Flow/Impact	$3.7m	$(0.3)m

The return on investment for the Port ("ROI") under the proposed alternative leasing alternative would be 44.6%, while the ROI for just retention of Building 803 and demolition of all other buildings "No Approval" would be -5.6%.

Alternative Program Option 2 will result in gross revenues of approximately $10.7 million over 30 months, and a net positive cash impact of $5.3 million over this period.

	Space Assignments Approved under Alt. Program Option 2	If Space Assignments Not Approved
Gross Revenue (Rent)	$10.7m	$5.0m
Rent Credits	$2.2m	$1.7m
Capital Investment (Port improvements)	$3.2m	$3.6m
Net Cash Flow/Impact	$5.3m	$(0.3)m

The ROI under Alternative Program Option 2 would be 69.1%, while the ROI for just retention of Building 803 and demolition of all other buildings "No Approval" would be -5.6%.

Not approving either Option 1 or Option 2 will result in a net negative cash impact of $0.3 million over the same 30-month period.

STAFFING IMPACT

This ordinance will have no impact on staffing. Engineering and Maritime Division staff currently assigned to the OAB project activities are available to deliver the work described herein.

SUSTAINABILITY

Approval of the space assignment agreements with the Current Tenants supports sound local and regional economic development through the retention of direct or indirect job opportunities. Additionally, in accordance with the Port's policies and programs, small and very small local vendors, contractors and consultants will be afforded opportunities for participation if the approval leads to future contracting activities.

ENVIRONMENTAL

The proposal to authorize the Executive Director to enter into space assignment agreements with Current Tenants on the former OAB, to approve a construction budget, and to construct building and foundation modifications was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. The proposed space assignments and building modifications are categorically exempt from requirements of 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 Section 15301(a), which exempts interior or exterior alterations of existing public or private structures, facilities, mechanical equipment, or topographical features, with negligible or no expansion of use beyond that previously existing. Approval of a construction budget is not subject to CEQA, according 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.

Furthermore, in July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an Environmental Impact Report ("EIR") for reuse of the OAB. On September 17, 2002, the Board of Port Commissioners ("Board"), acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In June 2012, the Board considered the 2012 OAB Project Initial Study/Addendum and adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP") with Resolution No. 12-76. The OAB EIR described projects to be developed by the Port on its portion of the former OAB, including lease of property for ancillary maritime support and structural demolitions, construction and paving as described in this agenda report.

Tenant operations and the proposed improvements will be required to comply with applicable mitigation measures and standard conditions of approval in the adopted SCA/MMRP, which is available on-line:
http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/OAK038127

All projects on the Economic Development Conveyance property at the former OAB must be completed in compliance with the September 27, 2002 Remedial Action Plan ("RAP") and Risk Management Plan ("RMP", which is Appendix E to the RAP) prepared for the State of California Department of Toxic Substances Control and the Oakland Base Reuse Authority.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The provisions of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) will apply to the construction and construction-related testing work performed by the Port or its contractors. Also, this lease may include construction type work that is within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA). If future tenant construction work under these lease agreements exceeds the thresholds required for coverage under the MAPLA, the provisions of MAPLA will apply when Port Permits are requested for said construction work.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

The Port portion of the construction work will be subject to the Port's Owner Controlled Insurance Program (OCIP) as the construction is a capital improvement project. However, the Current Tenants will separately be responsible for insuring their portion of the construction work and not included in OCIP.

GENERAL PLAN

This action does not change the use of any existing facility, make substantial alterations to any existing facilities, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required. All projects approved under follow-up actions will meet the transportation designation of the Oakland General Plan.

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 the construction portion of this contract, because the contract is a construction contract covered by the state prevailing wage rules and the prevailing rate of wage is higher than the wage required by the Living Wage Regulations. However, living wage requirements will apply to this lease agreement, if the tenants employ 21 or more employees working on Port-related work and the tenancy agreement is greater than $50,000.

BOARD MTG. DATE: 6/13/13

OPTIONS

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

1. Authorize the Executive Director ~~(Acting)~~ to enter into Space Assignment Agreements with the Current Tenants (Impact Transportation, Industrial Railways Company, Pacific Coast Container, And Port Transfer Inc.) in the 800 series buildings on the former Oakland Army Base, approve approximately $3.9 million for associated building and site improvements, and dispense with standard bid procedures to construct such improvements, as described within this Agenda Report as Alternative Program Option 1. ~~This is the recommended option.~~

2. Authorize the Executive Director to execute the four Space Assignment Agreements with the Current Tenants (Impact Transportation, Industrial Railways Company, Pacific Coast Container, And Port Transfer Inc.) in the 800 series buildings on the former Oakland Army Base, and Execute the Various Temporary and Permanent Easements and Leases, approve up to approximately $3.9 million for associated building and site improvements, and dispense with standard bid procedures to construct such improvements, as described within this Agenda Report as Alternative Program Option 2. **This is the recommended option.**

3. Do not authorize the Executive Director ~~(Acting)~~ to execute the four Space Assignment Agreements with the Current Tenants identified in this Agenda Report for the subject 800 series buildings on the former Oakland Army Base, and therefore approve approximately $3.6 million for demolition of all 800 series buildings (except for Building 803) to comply with the requirements of the Cost Sharing Agreement.

4. Authorize the Executive Director ~~(Acting)~~ to execute the four Space Assignment Agreements with the Current Tenants identified in this Agenda Report for the subject 800 series buildings on the former Oakland Army Base, subject to different terms and conditions other than those stated within this Agenda Report, which would be subject to acceptance by the Current Tenants.

RECOMMENDATION

Staff recommends that the Board approve Alternative Program Option 2 as follows:

1. Authorize the Executive Director to enter into Space Assignment Agreements with the Current Tenants (Impact Transportation, Industrial Railways Company, Pacific Coast Container, and Port Transfer Inc.) in the 800 series buildings on the former Oakland Army Base;

2. Approve up to approximately $3.9 million for associated building and site improvements, and dispense with standard bid procedures to construct such improvements, as described within this Agenda Report; and

3. If the City executes the "notch" lease by June 27, 2013, authorize the Executive Director to negotiate and execute the temporary and permanent easements and leases as described in this Agenda Report.

4. However, if the "notch" lease is not fully executed by the City on or before June 27, 2013, then staff recommends that the Board authorize the Executive Director to approve Alternative Program Option 1 and immediately enter into Space Assignment Agreements with the Current Tenants (Impact Transportation, Industrial Railways Company, Pacific Coast Container, and Port Transfer Inc.) in the 800 series buildings on the former Oakland Army Base, approve approximately $3.9 million for associated building and site improvements, and dispense with standard bid procedures to construct such improvements, as described within this Agenda Report.

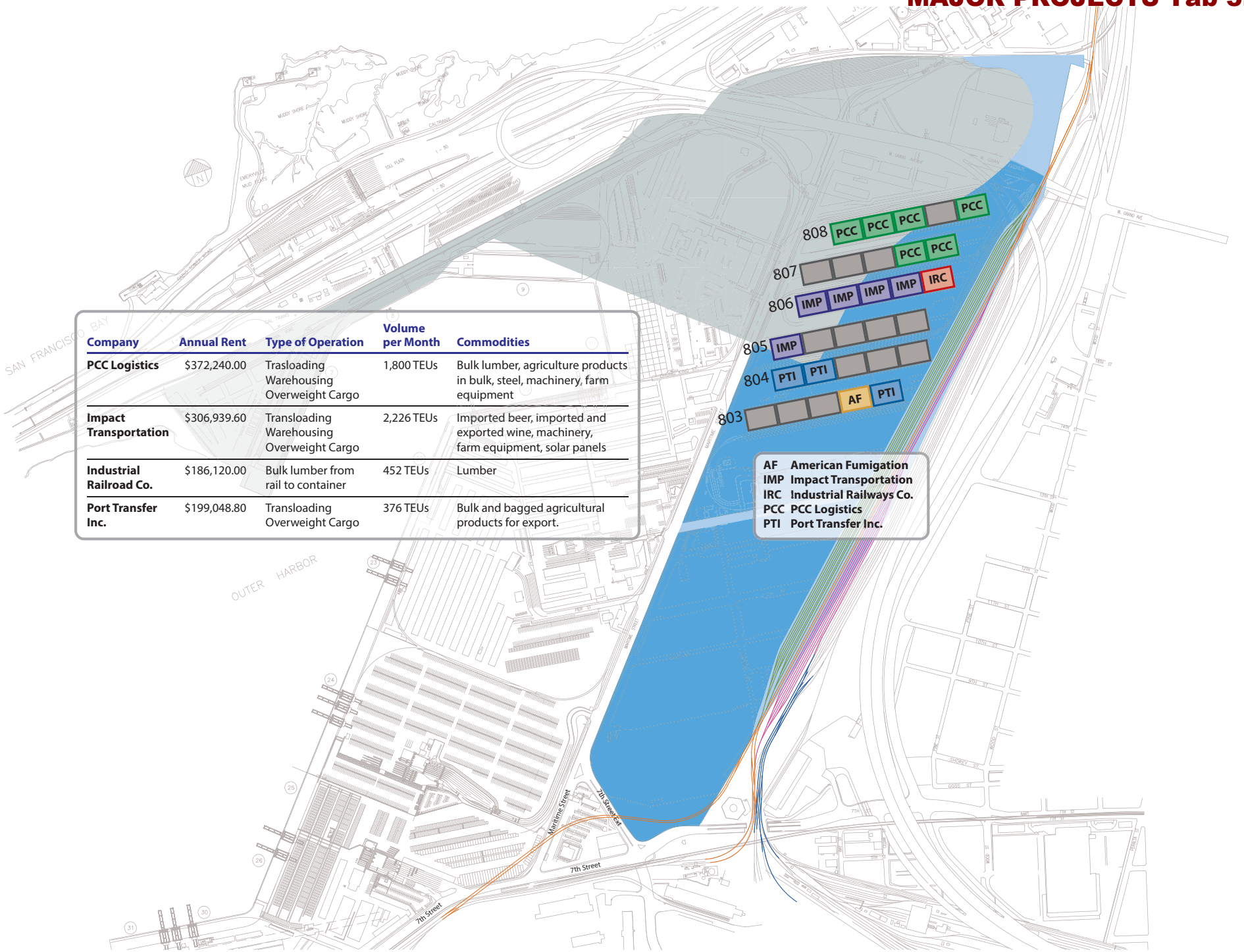
Attachments:

Exhibit A - Map of ~~existing tenant~~Current Tenant locations on Port-Owned OAB
Exhibit B - Map of ~~tenant locations~~Current Tenant locations without notch (Alternative Program Option 1)
Exhibit C – Term Sheet referencing City/Port easements
Exhibit D – Map of proposed easements
Exhibit E - Map of tenant locations under Alternative Program Option 2 (with notch)

BOARD MTG. DATE: 6/13/13

Exhibit A

Map of Current Tenant locations on Port-Owned OAB ~~Map of Current Tenants on Port-Owned OAB~~

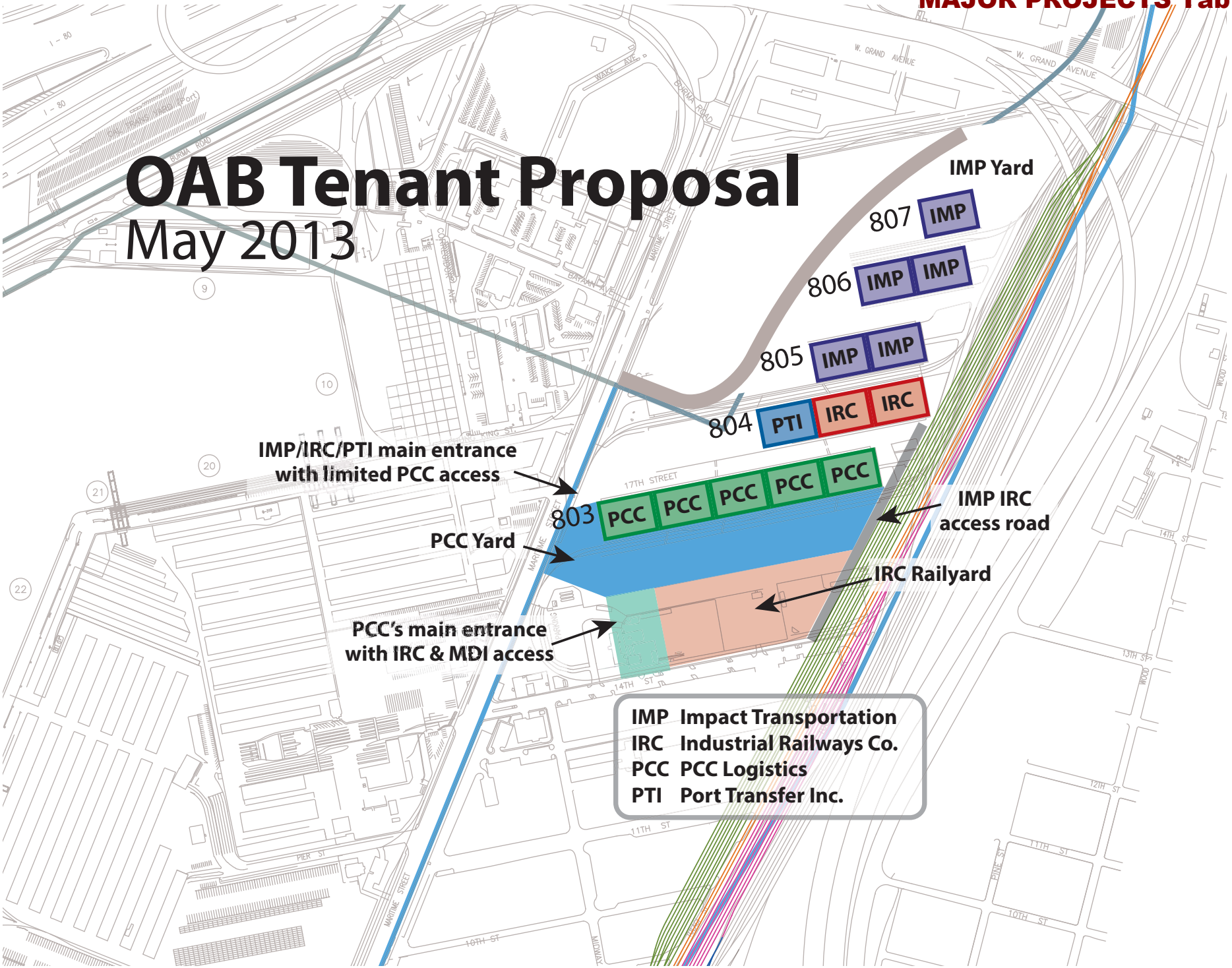


Company	Annual Rent	Type of Operation	Volume per Month	Commodities
PCC Logistics	$372,240.00	Trasloading Warehousing Overweight Cargo	1,800 TEUs	Bulk lumber, agriculture products in bulk, steel, machinery, farm equipment
Impact Transportation	$306,939.60	Transloading Warehousing Overweight Cargo	2,226 TEUs	Imported beer, imported and exported wine, machinery, farm equipment, solar panels
Industrial Railroad Co.	$186,120.00	Bulk lumber from rail to container	452 TEUs	Lumber
Port Transfer Inc.	$199,048.80	Transloading Overweight Cargo	376 TEUs	Bulk and bagged agricultural products for export.

BOARD MTG. DATE: 6/13/13

Exhibit B

Map of Current Tenant locations without notch (Alternative Program Option 1) ~~Map of Proposed Location of Current Tenants Under Alternative Interim Leasing Program~~


OAB Tenant Proposal
May 2013
IMP Yard
807 IMP
806 IMP IMP
805 IMP IMP
804 PTI IRC IRC
803 PCC PCC PCC PCC PCC
IMP/IRC/PTI main entrance
with limited PCC access
PCC Yard
PCC's main entrance
with IRC & MDI access
IMP IRC
access road
IRC Railyard
IMP Impact Transportation
IRC Industrial Railways Co.
PCC PCC Logistics
PTI Port Transfer Inc.

BOARD MTG. DATE: 6/13/13

Exhibit C

Term Sheet referencing City/Port easements

Memo Regarding Edge Certain Conditions
(East Gateway Border)

1. Port to City Temporary Construction Easements:

a. Surcharge Area: (Easement Area P-12B on exhibit)

i. Width: Forty (40) foot wide.
ii. Location: Along southeast border of the East Gateway, located between the northern border of the drive aisle between Bldgs. 804 and 805 and future East Burma Rd.
iii. Purpose: To be used initially for placement and maintenance of slope of surcharge pile for East Gateway (South) and then for the construction of the rail improvements pursuant to item 2 below.
iv. Duration: Surcharging activities will be for twenty (20) months, commencing on April 1, 2014. Rail construction activities will be for an additional twelve (12) months.
v. Nature: Exclusive.

Notes:

1. City responsible for removal of all fill upon expiration of easement to ultimate design elevation.
2. Installation of improvements at City's sole cost.

b. East Burma Road Area (Port Fee Area): (Easement Area P-8 on Exhibit)

i. Width: Twenty (20) feet wide.
ii. Location: Along southeast border of future East Burma Road, located along the border of East Gateway (North).
iii. Purpose: Construction staging and activity related to the installation of East Burma Road.
iv. Duration: Commencing January 1, 2014 through January 1, 2016.
v. Nature: Non-exclusive.

c. East Burma Road Area (Caltrans Easement Area): (Easement Area P-13 on Exhibit)

i. Width: Twenty (20) feet wide.
ii. Location: Along southeast border of future East Burma Road, located within Caltrans underfreeway easement.
iii. Purpose: Construction staging and activity related to the installation of East Burma Road.
iv. Duration: Commencing January 1, 2014 through January 1, 2016.
v. Nature: Non-exclusive.

Notes:

1. Note: Form of document to be a lease rather than an easement per terms of Caltrans' easement.
2. Subject to Caltrans' approval.

d. Rail Construction Area (Port Fee Area): (Easement Areas P-9 and P-12A (portion) on Exhibit)

i. Width: Variable – see exhibit.
ii. Location: Along southeast border of East Burma Road.
iii. Purpose: Installation of permanent fill to ultimate design elevation and construction staging and activities related to installation of rail improvements.
iv. Duration: Commencing January 1, 2016 through December 31, 2016.
v. Nature: Exclusive during fill duration (6 months) and non-exclusive thereafter.

Notes:

1. May commence earlier of City able to reach deal with Port tenant that is acceptable to Port.
2. Subject to provisions of RAP/RMP and engineering specifications, City will accept an amount of fill material from the Port equivalent to the permanent fill to be placed in the area of the long term easement. No fee to be charged by City, but Port to transport fill to designated site on City property at Port's cost.

e. Rail Construction Area (Caltrans Easement Area): (Easement Areas P-9 and P-12A (portion) on Exhibit)

i. Width: Variable – see exhibit.
ii. Location: Along southeast border of East Burma Road, located within Caltrans underfreeway easement.
iii. Purpose: Installation of permanent fill to ultimate design elevation and construction staging and activities related to installation of rail improvements.
iv. Duration: Commencing January 1, 2016 through December 31, 2016.
v. Nature: Exclusive during fill duration (6 months) and non-exclusive thereafter.

Notes:

1. Note: Form of document to be a lease rather than an easement per terms of Caltrans' easement.
2. Subject to Caltrans' approval and requirement to provide plans to Caltrans for approval at least 60 days prior to construction.
3. May commence earlier of City able to reach deal with Port tenant that is acceptable to Port.
4. Subject to provisions of RAP/RMP and engineering specifications, City will accept an amount of fill material from the Port equivalent to the permanent fill to be placed in the area of the long term easement.

No fee to be charged by City, but Port to transport fill to designated site on City property at Port's cost.

f. Building 805, 806, 807 and 808 Deconstruction.

i. Width: Variable, not to exceed fifty (50) feet.
ii. Location: Along southeast border of East Gateway (North and South).
iii. Purpose: Deconstruction of designated buildings and related improvements.
iv. Duration: Six (6) months commencing on January 1, 2014.
v. Nature: Non-exclusive.

Notes: Costs per Cost Sharing Agreement.

g. Right to Paint Port Buildings. Port shall grant City a right of entry to paint one or more of preserved portions of Bldgs. 803 through 807, inclusive, at City's sole cost and expense.

2. Port to City Long Term Easement (Port fee portion)/Lease (Caltrans' easement area).

a. Width: Forty (40) feet – twenty (20) feet either side of center line of track.
b. Location: Along designated rail lines – which include a single non-exclusive "through" line running north to south, an exclusive rail spur serving East Gateway (North) and an exclusive rail spur serving East Gateway (South).
c. Purpose: Operation and maintenance of rail lines and related improvements (signs, switchgear, drainage, etc.).
d. Duration: Sixty six (66) years commencing upon completion of construction.

Notes:

1. City, Port and Developer to coordinate on design of rail location to minimize impact on Port property of the curve of rail line located north of Building 807 without adversely impacting rail operations.
2. Improvements to be constructed at City tenant's sole cost.
3. Port to have non-exclusive use of through line pursuant to Rail Access Agreement to be entered into by City and Port per Cost Sharing Agreement.
4. Exclusive rail spurs to be maintained in first class condition by City tenant.
5. Non-exclusive through line to be maintained by Rail Operator in first class condition.
6. The Master Plan contemplates three rail lines through this general area. If the Port desires to install the third line, such work will be completed at the Port's expense.

3. City to Port Leases/Temporary Easement:

a. Notch lease: (Lease Area C per Exhibit)

i. Area: Approximately 18,630 square feet.

ii. Location: Southeast corner of East Gateway (South).
iii. Purpose: Maintenance and occupation of portion of Building 804 located on City property.
iv. Duration: Thirty-six (36) months, commencing on July 1, 2013, subject to extension upon parties' mutual agreement.
v. Nature: Exclusive.

Note: Corresponding leases for Central Gateway border and West Gateway (Wharf 6) to have same term.

b. Building 805, 806, 807 and 808 Deconstruction easement.

i. Width: Variable, not to exceed fifty (50) feet.
ii. Location: Along northeast border of East Gateway.
iii. Purpose: Deconstruction of designated buildings and related improvements.
iv. Duration: July 1, 2013 through December 31, 2013.
v. Nature: Non-exclusive.

Notes: Cost per Cost Sharing Agreement.

c. Temporary Access (18th Street) easement:

i. Width: Between Buildings 805 and 806.
ii. Location: Between Buildings 805 and 806.
iii. Purpose: Temporary tenant and construction access.
iv. Duration: July 1, 2013 through December 31, 2013.
v. Nature: Non-exclusive.

Notes: Permanent tenant access will be over 17th Street. Port and City to analyze existing signal for required improvements and costs, if any, per allocation under project SCA/MMRP.

3. General Notes:

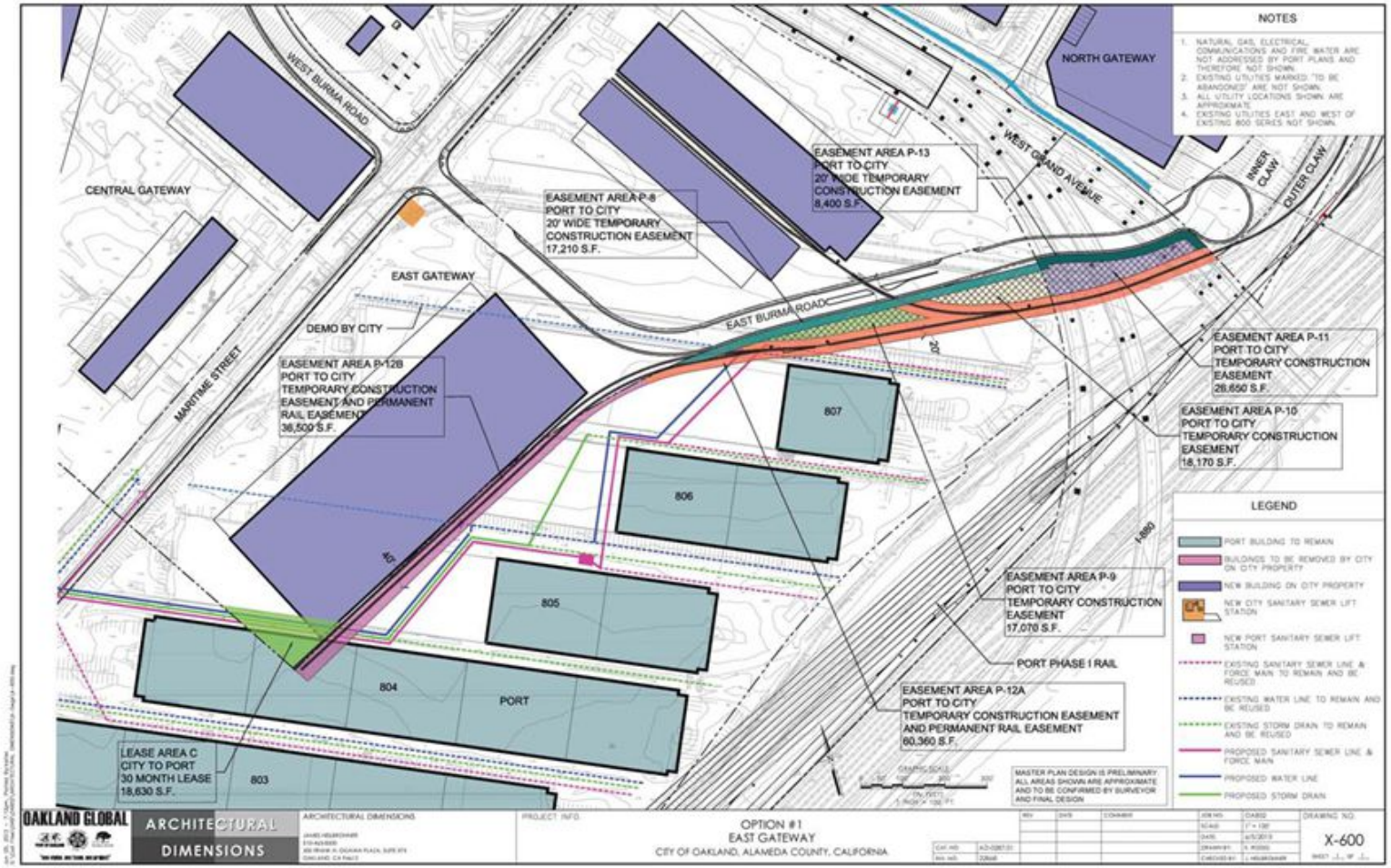
a. Form of easements and leases to include indemnity and insurance provisions in favor of the grantor/lessor similar to those included in recent city/Port documents.
b. Square footages on exhibit are approximate.

BOARD MTG. DATE: 6/13/13

Exhibit D

Map of Proposed Easements

BOARD MTG. DATE: 6/13/13



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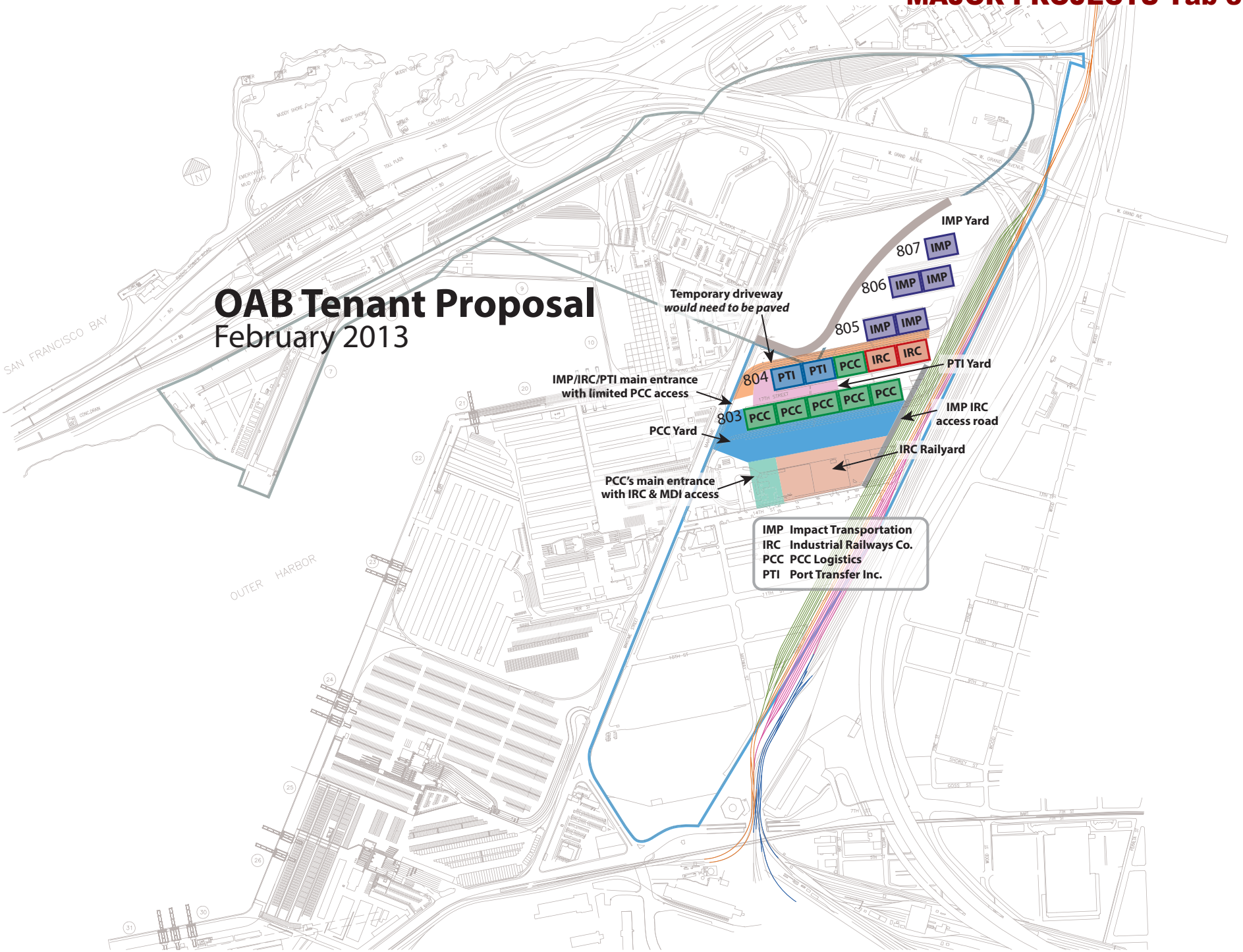
BOARD MTG. DATE: 6/13/13

Exhibit E

Map of tenant locations under Alternative Program Option 2 (with notch)


OAB Tenant Proposal
February 2013
Temporary driveway
would need to be paved
IMP/IRC/PTI main entrance
with limited PCC access
PCC Yard
PCC's main entrance
with IRC & MDI access
IMP Yard
807 IMP
806 IMP IMP
805 IMP IMP
804 PTI PTI PCC IRC IRC
803 PCC PCC PCC PCC PCC
PTI Yard
IMP IRC
access road
IRC Railyard
IMP Impact Transportation
IRC Industrial Railways Co.
PCC PCC Logistics
PTI Port Transfer Inc.
SAN FRANCISCO BAY
OUTER HARBOR

6/13/13
3.4
D.C.1 KK
dwz

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BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

ORDINANCE AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO SPACE ASSIGNMENT AGREEMENTS WITH IMPACT TRANSPORTATION LLC, INDUSTRIAL RAILWAYS COMPANY, PACIFIC COAST CONTAINER AND PORT TRANSFER INC. IN THE 800 SERIES BUILDINGS ON THE FORMER OAKLAND ARMY BASE ("OAB") FOR A MINIMUM TERM OF 30 MONTHS.

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WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Item 3.4, dated June 13, 2013 (herein the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; now, therefore,

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland ("Board") as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board approves the terms and conditions of and authorizes the Executive Director or her designee to enter into a Space Assignment Agreement with each of Impact Transportation LLC, Industrial Railways Company, Pacific Coast Container, and Port Transfer Inc. in the 800 series buildings on the OAB for a minimum term of 30 months at the rates and subject to the terms and conditions as more fully described in the Agenda Report.

Section 3. The Board hereby finds and determines as follows:

1. That this project has been determined to be categorically exempt from the California Environmental Quality

Act ("CEQA") pursuant to CEQA Guidelines Sections 15301, Existing Facilities. CEQA does not apply to 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.

2. That in July 2002, the City of Oakland ("City"), as the lead agency under CEQA, certified an Environmental Impact Report ("EIR") for reuse of the OAB. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and a mitigation program in reliance on the City's EIR (Resolution No. 02317). In June 2012, the Board considered the 2012 OAB Project Initial Study/Addendum and adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP") with Resolution No. 12-76. The OAB EIR described projects to be developed by the Port on its portion of the former OAB, including lease of property for ancillary maritime support as described in the Agenda Report. Tenant operations and the proposed improvements will be required to comply with applicable mitigation measures and standard conditions of approval in the adopted SCA/MMRP, which is available on-line: http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/OAK038127.

3. All projects on the Economic Development Conveyance property at the former OAB are required to be completed in compliance with the September 27, 2002 Remedial Action Plan ("RAP") and Risk Management Plan ("RMP", which is Appendix E to the RAP) prepared for the State of California Department of Toxic Substances Control and the Oakland Base Reuse Authority.

Section 4. The Board hereby authorizes the Executive Director of the Port ("Executive Director") or her designee, to approve and execute any documents that may be required to consummate the tenancy described in the Agenda Report, subject to the Port Attorney's approval as to form and legality, and subject to the condition that the approvals set forth in this ordinance be valid for no longer than 30 days, and that if the subject documents are not fully executed by that date such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or her designee.

Section 5. This ordinance is not evidence of and does not create or constitute (a) a contract or lease, entitlement or property

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interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until separate written agreement(s) are duly executed on behalf of the Board as authorized by this resolution, is signed and approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement(s).

Section 6. This ordinance shall supercede and replace Ordinance No. 4221 adopted by this Board on March 28, 2013.

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_____
President.

Attest: _____
Secretary.

Approved as to form and legality:

_____
Port Attorney

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6/13/13
Item 3.4
DC/MR/arg

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

RESOLUTION FINDING AND DETERMINING THAT IT IS IN THE BEST INTEREST OF THE PORT OF OAKLAND ("PORT") TO AWARD CONTRACT(S) TO CONSTRUCT REQUIRED MODIFICATIONS TO PRESERVE PORT PORTIONS OF BUILDINGS 804, 805, 806 AND 807 ("BUILDING AND SITE IMPROVEMENTS") WITHOUT STANDARD BIDDING PROCEDURES; AUTHORIZING THE DIRECTOR OF ENGINEERING TO APPROVE THE PROJECT MANUAL AND PLANS; CALLING FOR RECEIPT OF INFORMAL BIDS THEREFOR; AND AUTHORIZING THE EXECUTIVE DIRECTOR TO AWARD A CONTRACT(S) FOR THE BUILDING IMPROVEMENTS IN A TOTAL AMOUNT NOT TO EXCEED $3,900,000.

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WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Board Agenda Report Item No. **3.4**, dated **June 13, 2013** ("Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland (the "Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, on March 14, 2013 by Resolution No. 13-32, the Board authorized solicitation and award of a contract to construct required modifications at Buildings 804, 805, 806 and 807; now, therefore, be it

RESOLVED, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda materials and in testimony received; and be it

FURTHER RESOLVED, that this resolution supercedes and replaces Resolution 13-32 and all actions authorized thereunder; and be it

FURTHER RESOLVED, that based upon the information contained in the Agenda Report, the Board hereby finds and determines that (i) calling

for bids on a competitive basis is impracticable and (ii) it is in the best interest of the Port to authorize the project for **Construction of Required Modifications to Preserve Port Portions of Buildings 804, 805, 806 and 807 ("Building and Site Improvements")** without standard bidding procedures and that said standard bidding procedures are hereby waived, and further authorizes an expenditure limit in a total amount not to exceed $3,900,000, as more fully described in the Agenda Report; and be it

FURTHER RESOLVED, that the Director of Engineering or his designee is authorized to approve the project manual and plans for **Building and Site Improvements** in advance of construction, pursuant to Government Code Section 830.6; and be it

FURTHER RESOLVED, the provisions of the Maritime and Aviation Project Labor Agreement ("MAPLA") apply to construction and construction-related testing work performed by the Port or its contractors. The lease may include construction type work that is within the scope of the MAPLA. If future tenant construction work is performed under the lease agreements, that exceeds the thresholds required for coverage under the MAPLA, the provisions of the MAPLA will apply when Port permits are requested for said construction work; and be it,

FURTHER RESOLVED, that the Board hereby approves and authorizes the Executive Director to negotiate and execute a contract(s), change order(s), or work authorization order(s), based on the receipt of informal proposals from on-call contractors currently under contract with the Port, for the **Building and Site Improvements**, in a total aggregate amount not to exceed $3,900,000; and be it

FURTHER RESOLVED that if the Executive Director determines that no acceptable proposal(s) has been received from an on-call contractor(s) currently under contract with the port, she is hereby authorized to negotiate and execute a contract(s) for such work in the open market based upon the receipt of informal proposals; and be it

FURTHER RESOLVED, that the Board hereby finds and determines that in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port CEQA Guidelines, it can be seen that there is no possibility that taking the recommended actions will result in a physical change to the environment, and therefore no further environmental review is required. The general rule in Section 15061(b) (3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential of causing a significant effect on the environment. When specific activities that will be performed under this contract are identified, staff will determine at that time whether additional CEQA review and clearance is needed; and be; it

FURTHER RESOLVED, that pursuant to Port Ordinance 1606, Section 22, the Board finds and determines it to be in the Port's best interest to delegate to the Executive Director, and hereby delegates to the

Executive Director, the authority to finally resolve bid protests in connection with this project; and be it

FURTHER RESOLVED, that a bond for the faithful performance of the work, and a bond to guarantee the payment of all claims for labor and materials furnished and for amounts due under the Unemployment Insurance Code, each in the amount of one hundred percent (100%) of the contract price shall be provided by the Contractor as prescribed by applicable laws and regulations and the contract specifications; and be it

FURTHER RESOLVED, that the procedure prescribed by applicable laws, regulations and the contract specifications shall be taken for the execution of said contract; and be it

FURTHER RESOLVED, that this resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This resolution approves and authorizes the execution of a contract in accordance with the terms of this resolution. Unless and until a separate written contract is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective contract.

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