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OAKLAND  
2013 JAN -3 PM 3:24

# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Army Base Leasing Program

DATE: December 13, 2012

City Administrator  
Approval

*Deanna Santana*

Date

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COUNCIL DISTRICT: 3

## RECOMMENDATION

Staff recommends that the City Council accept:

A Report and Possible Action on the Oakland Army Base Interim Leasing Program

## BACKGROUND/LEGISLATIVE HISTORY

At the December 11, 2012 meeting of the Community and Economic Development (CED) Committee, staff presented an informational report on the status of the Army Base Interim Leasing Program. A copy of the previous informational report is attached. The CED Committee forwarded the report to the December 18, 2012 meeting of the full City Council. Additionally, the CED Committee directed staff to return to its January 15, 2013 meeting with a report noticed for possible Council action. This report provides an update on the closure of the Army Base Interim Leasing Program, the status of work with current tenants under the program, and a request for further Council direction on issues raised by the closure of the program.

## ANALYSIS

### Summary of Extended Vacation Agreement

Consistent with the June 2012 action of the City Council, and as previously noted in the staff report to the December 11, 2012 CED Committee, California Capital & Investment Group (CCIG), pursuant to its role as the property manager for the Oakland Army Base under the applicable Property Management Agreement, is in the process of implementing the closing of the Interim Leasing Program with input and direction from City staff. CCIG has been authorized to investigate the feasibility of negotiating extended vacation dates for certain tenants as may be permitted by the project phasing schedule without adversely affecting the project critical path timeline. This process has included analysis of: (a) the project timeline/phasing schedule; (b)

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projected impacts outside the boundaries of the current phase (access/utilities, etc.); c) tenant needs; and d) feasible incentives and penalties for tenant's failure to comply with negotiated terms.

CCIG has developed the following agreement framework regarding an extended vacation date (the date by which tenants are required to leave or surrender the property): a) a firm date for tenant's vacation of the property, which date shall be controlled by the project timeline; b) full resolution of any monetary or other claims between the City and the tenants; c) tenant's release of all known and unknown claims against the City; d) liquidated damages payable by the tenant for failure to timely vacate the property; e) a Stipulation to Judgment for Possession of the Premises executed by all tenant parties, sub-tenants and their respective lawyers, if any; f) an agreement that a judgment for possession may be entered after certain City conditions have been met; and g) tenant's waiver of the right to seek or obtain a stay of execution of the judgment for possession. Staff notes that it may not be feasible to negotiate an extended vacation date for each of the tenants.

#### Status of Extended Vacation Agreements

On December 12, 2012, City staff, CCIG representatives and Oakland Film Center representatives discussed specifics of the proposed Oakland Film Center lease amendment on a conference call. The items discussed were: i) extending the vacation date to May 31, 2013, ii) joint and several liability, iii) liquidated damages, iv) rent rebate for on-time vacation, v) security deposit and rebate escrow, and vi) December 2012 walk-through and video to establish surrender conditions. As agreed to in the call, CCIG provided a revised draft amendment based on the December 12 conference call discussion and agreement.

Impact Transportation has been provided a draft extended vacation date amendment and has met with CCIG representatives regarding the amendment. There is no additional information to provide at this time. However, staff will provide an update in its oral presentation at the January 15, 2013, CED Committee meeting.

Pacific Coast Container (PCC) has been provided a draft extended vacation date amendment and CCIG has contacted PCC to schedule a meeting to discuss the amendment. As of this report date PCC has not responded and no meeting has been scheduled. There is no additional information to provide at this time. Staff will provide an update in its oral presentation at the January 15, 2013, CED Committee meeting.

Urban Recycling Solutions, Inc. (Urban Recycling) has met with CCIG representatives regarding the project and its occupancy at the Army Base. Urban Recycling provided an exit proposal, which included the following terms: i) continued acceptance of concrete and asphalt for recycling until March 31, 2013, ii) continued occupation of the site until September 2013 and iii) no rent for these time periods. Staff and CCIG are preparing to respond with the following terms:

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a) Urban Recycling to cease acceptance of additional materials (concrete, asphalt, etc.) as of December 20, 2012, b) Urban Recycling to surrender possession of the site on February 1, 2013, c) Urban Recycling to be provided opportunity to continue manufacturing/crushing existing materials into recycled aggregate and selling/exporting aggregate materials until April 30, 2013, d) in the event Urban Recycling continues to perform and is not in default of the agreement on May 1, 2013, Urban Recycling will receive another extension to June 30, 2013 to continue manufacturing/crushing existing materials into recycled aggregate and selling/exporting aggregate materials, and e) in the event Urban Recycling continues to perform and is not in default of the agreement on July 1, 2013, Urban Recycling will receive a final extension to August 31, 2013 to complete manufacturing/crushing existing materials into recycled aggregate and selling/exporting aggregate materials. The total extensions for Urban Recycling would be an eight month extended vacation date. Staff will provide an update on the Urban Recycling discussions and negotiations in its oral presentation at the January 15, 2013, CED Committee meeting.

#### City Council & CED Committee Direction

At the December 11, 2012 CED Committee and the December 18, 2012 City Council meetings, Councilmembers provided staff direction on an informational report to: 1) regarding May 31, 2013 as the extended vacation for all tenants at the Army Base, and 2) that the condition of the premises at surrender should reflect the fact the buildings will be demolished or deconstructed.

As described above, CCIG and staff are currently negotiating May 31, 2013, extended vacation dates with Impact Transportation, Oakland Film Center and Pacific Coast Container subject to each of these tenants agreeing to lease amendments that include: a) a firm date for tenant's vacation of the property, which date shall be controlled by the project timeline; b) full resolution of any monetary or other claims between the City and the tenants; c) tenant's release of all known and unknown claims against the City; d) liquidated damages payable by the tenant for failure to timely vacate the property; e) a Stipulation to Judgment for Possession of the Premises executed by all tenant parties, sub-tenants and their respective lawyers, if any; f) an agreement that a judgment for possession may be entered after certain City conditions have been met; and g) tenant's waiver of the right to seek or obtain a stay of execution of the judgment for possession. Staff notes that while we are attempting an extended vacation date for each of these tenants, staff and CCIG may not be successful.

Additionally, staff notes that even with the amendment provisions and protections (a through g described above) the City's possession of the property is still at risk and could require an additional three to four month court (unlawful detainer) process to obtain possession of the property. Using the May 31, 2013, date as an example, if a tenant were to execute an extended vacation date amendment as proposed, and said tenant was still occupying the property on June 1, 2013, the City would have to complete an unlawful detainer process that could take until October 1, 2013 for the City to get possession of the property. CCIG and staff have developed

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these extended vacation date amendment provisions to provide: 1) the tenants with monetary incentives to vacate on the date agreed, and 2) the City with ample protections and tools to get possession of the property. However, all of these incentives and protections do no guarantee that the City will obtain possession of the property without having to go through a potentially three to four month unlawful detainer/court process.

### **PUBLIC OUTREACH/INTEREST**

This item did not require any public outreach other than the required posting on the City's website. City staff and CCIG representatives have met and continue to meet with affected tenants.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office and California Capital & Investment Group, the City's Army Base Property Manager.

### **COST SUMMARY/IMPLICATIONS**

The fiscal impact to the City is a loss of approximately \$500,000 in net annual revenue from the interim leasing program. The interim leasing program generates approximately \$2,500,000 in annual gross revenue. Almost \$1 million of the \$2,500,000 annual gross revenue goes into paying water bills and utility systems operation, maintenance and repair.

The State of California awarded the City \$242 million in Trade Corridor Infrastructure Fund (TCIF) monies for use at the Army Base for infrastructure development. Absent progress in development, access to these funds would expire at the end of 2013. The development of new infrastructure at the Army Base is an imperative precondition to any subsequent development at the site; the existing infrastructure is 60 plus years old and a significant liability, both monetary and otherwise. The only issue is when the new infrastructure development occurs. If the City passes on the \$242 million in TCIF monies, the City would need to fund the infrastructure development through other at this time unknown means or resources.

### **FISCAL/POLICY ALIGNMENT**

The proposed action aligns with the City's Army Base Infrastructure Development Project in that it allows the Infrastructure Project to proceed.

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**SUSTAINABLE OPPORTUNITIES**

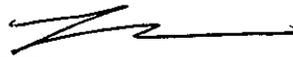
***Economic:*** This proposed action does not provide any economic benefits or opportunities.

***Environmental:*** This proposed action does not provide any environmental benefits.

***Social Equity:*** This proposed action does not provide any social equity benefits.

For questions regarding this report, please contact John Monetta, Real Estate Agent, at (510) 238-7125.

Respectfully submitted,



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Fred Blackwell  
Assistant City Administrator

Prepared by:  
John Monetta, Real Estate Agent  
Real Estate Service Division

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CED Committee  
January 15, 2013



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## AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Army Base Leasing Program

DATE: November 6, 2012

City Administrator  
Approval

*Deanna Santana* Date

11/12/12

COUNCIL DISTRICT: 3

### RECOMMENDATION

An Informational Report Regarding the Oakland Army Base Interim Leasing Program

### BACKGROUND/LEGISLATIVE HISTORY

The Oakland Army Base Interim Leasing Program commenced in June 1999 with the execution of a Master Lease with the federal government as part of the closure of the Oakland Army Base. The interim leasing program was originally envisioned as a 2 to 3 year program that would sunset in 2003 with the execution of a development agreement in 2002/2003 timeframe. The original interim leasing program agreements leased space to the tenants until 2003 with 180-day early termination clauses that would allow for development to occur with 180-day notice to our tenants.

In 2003, the Oakland Base Reuse Authority (OBRA) acquired the property from the federal government through a no-cost Economic Development Conveyance with no development deal in place. The City and OBRA continued to lease the property to approximately 65-70 tenants under the same short term leasing arrangements containing 180-day early termination clauses.

In 2006, OBRA, the City and Port neared completion of Title Settlement and Exchange Agreement with the State of California that would allow the City to develop its portion of the base free of any Trust restrictions and requirements. In anticipation of the agreement, OBRA and City staff cleared the site of more than 60 tenants except Pacific Coast Container remained in Building 808 and the more than 30 Oakland Film Center tenants moved into Buildings 812, 822 and 823.

On August 7, 2006, OBRA transferred half of the Army Base to the Redevelopment Agency which entered into leases with Pacific Coast Container, the Oakland Film Center tenants,

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Oakland Maritime Support Services and a few other tenants. The Redevelopment Agency leases also were short term (6-12 months) in duration with the same 180-day early termination clauses. Beginning in 2010, as Army Base development negotiations began to mature, City Real Estate staff reduced the traditional Army Base Interim Leasing Program early termination clauses down to 90-day and 30-day clauses. Staff learned through its 2006 tenant exit process that after termination notices were provided to tenants, it still took up to an additional 3-4 months to remove tenants from the site through an eviction process. Given the significance of the \$242 million in state of California Trade Corridor Infrastructure Funds and deadlines associated with the use of these funds, staff recognized the City and its contractors and developers would need shorter termination timeframes to ensure the site was clear prior to infrastructure construction and to allow for timely commencement of construction.

The recently amended Trade Corridor Infrastructure Fund (TCIF) Baseline Agreement, the \$242 million Army Base Infrastructure Project is required to enter into a construction contract and proceed by June 2013. As part of that commencement, the site must be cleared of tenants to allow various abatement, remediation, deconstruction and remaining RAP/RMP environmental remediation to be completed. A fuller discussion of these construction activities is described below in the Analysis section. This clearing of the site necessitates the closing of the Army Base Interim Leasing Program and the vacation and potential eviction of the interim leasing program tenants.

Given the June 2013 TCIF Baseline Agreement requirement for commencement of construction, City staff desired to ensure that there was sufficient time to (a) allow for the required termination notice (up to 90 days) and (b) prosecute any legal action that may be necessary to require tenants to vacate the site (per past experience – 3 to 4 months). This necessitated that the tenants in the East and North Gateway Areas be provided with immediate termination notices as a first step in the process of closing the Army Base Interim Leasing Program. This was completed on October 25, 2012. These notices will be followed by additional notices, information and updates to the tenants as time and the project move forward.

## ANALYSIS

### Closing of the Interim Leasing Program

As noted above, the termination notices provided to the East and North Gateway tenants are envisioned as the first step in a process to close out the Army Base Interim Leasing Program. By definition the termination notices needed to notify the tenants that their lease would terminate on a specific date pursuant to the terms and conditions of their respective leases. In order to avoid an argument that there was any ambiguity to the notices, the termination notices could not identify other processes, resources or extension opportunities the City may pursue in closing the Interim Leasing Program.

Now that the notices are in place, the City will require California Capital & Investment Group (CCIG), pursuant to its role as the property manager for the Oakland Army Base under the applicable Property Management Agreement, to implement the closing of the Interim Leasing Program with input and direction from City staff. Accordingly, CCIG has been authorized to investigate the feasibility of negotiating extended vacation dates for certain tenants as may be permitted by the project phasing schedule without adversely affecting the project critical path timeline. This process will include analysis of (a) the project timeline/phasing schedule; (b) projected impacts outside the boundaries of the current phase (access/utilities, etc.); (c) tenant needs; and (d) feasible incentives and penalties for tenant's failure to comply with negotiated terms.

It is expected that any agreement regarding an extended vacation date (the date by which tenants are required to leave or surrender the property) will include some or all of the following: a) a firm date for tenant's vacation of the property, which date shall be controlled by the project timeline; b) full resolution of any monetary or other claims between the City and the tenants; c) tenant's release of all known and unknown claims against the City; d) liquidated damages payable by the tenant for failure to timely vacate the property; e) a Stipulation to Judgment for Possession of the Premises executed by all tenant parties, sub-tenants and their respective lawyers, if any; f) an agreement that a judgment for possession may be entered after certain City conditions have been met; and g) tenant's waiver of the right to seek or obtain a stay of execution of the judgment for possession.

Staff notes that it may not be feasible to negotiate an extended vacation date for each of the tenants.

City staff has identified other assistance that may be offered to the tenants. Real Estate staff has provided Army Base tenant contact information to local brokers with available property in Oakland. Office of Workforce and Economic Development staff has contacted the notified tenants to provide business retention services including: free access to the CoStar Commercial/Industrial Multi-Listing Service for site referrals, introductions to Commercial and Industrial brokers, referral to a diverse set of financing options, referral to Workforce Development Services, consideration for Business License Tax Incentives, connection to Enterprise Zone to coordinate hiring and Equipment Tax Credits at the new site and referral to Alameda County Small Business Development Center Assistance Programs. Staff will continue to provide direct assistance to tenants in finding new business locations.

#### Current Infrastructure Project Phasing Schedule

The following is a brief summary of the current phasing schedule for the Army Base Infrastructure Project and is intended for basic context purposes only. The Infrastructure Project and its phasing schedule has been developed with certain current assumptions. These

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assumptions are subject to change. The Army Base Infrastructure Project is phased by parcel and task. The first task in each parcel that has existing buildings is to cut, cap and relocate existing utilities. The second task in each parcel that has existing buildings is to abate each building, complete any necessary remediation and then deconstruct these buildings (or portions as respect the building split by the City and Port property lines). Deconstruction which is the slow controlled dismantling of each building in order to maximize the components for reuse or recycle, can extend from several weeks to several months. The subsequent tasks on each parcel include the demolition of any building slabs and pavement, compaction of the existing fill layer to mitigate soil liquefaction, installation of groundwater drainage systems (to allow the surcharging of the parcel to be effective) and placement of the fill and surcharge soil on the parcel. Parcels not being surcharge first will have collection ponds built on them to allow a collection, settling and testing location for the ground water that will be released during the surcharge process. Consequently the need of overall access to each parcel occurs early in the phasing though the actual surcharge may be two or three years away. Once the soil is placed for the surcharging, the expected settlement takes twelve months.

Seven phases have been scheduled to complete this work. By phase, the start dates from the October 1, 2012 sequencing plan are:

Phase	Start Date	End Date
1 Central Gateway	November 1, 2012	May 21, 2015
2 East Gateway	April 1, 2013	July 19, 2017
3 North Gateway	June 13, 2013	April 20, 2017
4 Central Gateway	October 1, 2013	June 27, 2017
5 North Gateway	May 1, 2014	April 20, 2017
6 Central Gateway	October 4, 2017	March 8, 2019
7 West Gateway	July 20, 2017	January 15, 2019

### PUBLIC OUTREACH/INTEREST

This item did not require any public outreach other than the required posting on the City's website.

### COORDINATION

This action has been coordinated with the City Attorney's Office and the Office of Workforce and Economic Development.

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### COST SUMMARY/IMPLICATIONS

The fiscal impact to the City is a loss of approximately \$500,000 in net annual revenue from the interim leasing program. The interim leasing program generates approximately \$2,500,000 in annual gross revenue. Almost of \$1 million of this annual gross revenue goes into paying water bills and utility systems operation, maintenance and repair. The state of California Trade Corridor Infrastructure Fund (TCIF) monies are set to expire at the end of 2013. The City was awarded \$242 million for use at the Army Base for infrastructure development. The development of new infrastructure at the Army Base is a must. The existing infrastructure is 60 plus years old and a significant liability both monetary and otherwise. The only issue is when the new infrastructure development occurs. If the City passes on the \$242 million in TCIF monies, the City would need to fund the infrastructure development through other at this time unknown means or resources.

### FISCAL/POLICY ALIGNMENT

The proposed action aligns with the City's Army Base Infrastructure Development Project in that it allows the Infrastructure Project to proceed.

### SUSTAINABLE OPPORTUNITIES

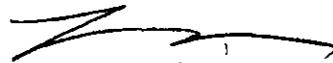
**Economic:** This proposed action does not provide any economic benefits or opportunities.

**Environmental:** This proposed action does not provide any environmental benefits.

**Social Equity:** This proposed action does not provide any social equity benefits.

For questions regarding this report, please contact John Monetta, Real Estate Agent, at (510) 238-7125.

Respectfully submitted,



Fred Blackwell  
Assistant City Administrator

Prepared by:  
John Monetta, Real Estate Agent  
Real Estate Service Division

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