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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.

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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

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,



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Assistant City Administrator

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