



CITY OF OAKLAND

AGENDA REPORT

TO: Jestin D. Johnson, City Administrator

FROM: Sofia Navarro, Interim
Director of Economic &
Workforce Development
Department

SUBJECT: OMSS Lease Disposition and
Development Agreement Amendment
and Oakland Maritime Lease
Extension

DATE: August 14, 2023

City Administrator Approval

Date: Aug 31, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt:

- (1) An Ordinance Authorizing The City Administrator To Negotiate And Execute A Third Amendment To The Lease Disposition And Development Agreement (LDDA) Between The City Of Oakland And OMSS, LLC, For Development Of An Ancillary Maritime Support Facility For Truck Parking And Related Services At 10 Burma Road And 2307 Wake Avenue, To Extend The Outside Closing Date By One Year With An Extension Payment of \$50,000, And Establish The Amounts Of The Fair Share Contribution And A Contribution To The West Oakland Community Fund Required Under The LDDA; And Adopting California Environmental Quality Act Findings**
- (2) An Ordinance Authorizing The City Administrator To Negotiate And Execute A First Amendment To The Triple Net Lease Dated April 8, 2016, Between The City Of Oakland And Oakland Maritime Support Services, Inc., Of 10 Burma Road For Truck Parking And Other Specified Uses To Extend The Term For One Year With Additional Rent In The Amount Of \$7,500 Per Month Commencing On The Fourth Month Of The Extension; And Adopting California Environmental Quality Act Findings**

EXECUTIVE SUMMARY

Staff is recommending that the City Council adopt the two proposed ordinances that would authorize the City Administrator to execute (1) a third amendment (Third Amendment) to the Ancillary Maritime Support Project Lease Disposition and Development Agreement, as amended by first and second amendments (LDDA) between the City of Oakland (City) and OMSS, LLC, a California limited liability company (OMSS), for the development of 10 Burma Road and 2307 Wake Avenue in the Gateway Area of the former Oakland Army Base (OAB) as

Community and
Economic Development Committee
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an ancillary maritime support facility for truck parking and related services (Project) and (2) a first amendment (First Amendment) to the Triple Net Lease (Interim Lease) dated April 8, 2016, by and between the City and Oakland Maritime Support, Inc. (Oakland Maritime), to extend the term for one year commencing on October 4, 2023 and expiring on October 3, 2024, with additional rent in the amount of \$7,500 per month commencing on the fourth month of the extension.

OMSS has worked with the City in good faith to expeditiously implement the performance schedule set forth in the LDDA, but still requires additional time to meet all the requirements. Therefore, the Third Amendment would require OMSS to pay the City a nonrefundable \$50,000 extension payment and would extend the outside closing date by one (1) year to allow OMSS to complete the permitting steps with the City required by LDDA Schedule of Performance. In addition, the Third Amendment also provides the final calculations of the specific amounts OMSS is required to pay for the Fair Share Contribution (as defined in the LDDA) and a contribution to the West Oakland Community Fund under Sections 3.2 and 4.4.1 of the LDDA, respectively.

BACKGROUND / LEGISLATIVE HISTORY

In 2000, after considering the OAB redevelopment plan, the San Francisco Bay Conservation and Development Commission (BCDC) issued Resolution No. 00-10 amending the San Francisco Bay Plan and San Francisco Bay Area Seaport Plan to require, among other things, that the City reserve 15 acres of land on or adjacent to the OAB for truck-related ancillary maritime services.

In July 2014, pursuant to this BCDC requirement, the City and OMSS executed an LDDA for the development of a 16.7-acre truck parking and truck services facility on the City-owned property located at Gateway Area within the OAB (Property) ([Ordinance No. 13201 C.M.S.](#)). OMSS is a California limited liability company that operates a truck parking and truck services facility at the OAB. The new facility proposed by OMSS would provide services to trucks operating in and out of the Port of Oakland (Port) and thereby reduce truck traffic and related impacts within the West Oakland neighborhood. The LDDA provides that OMSS must make payments to the City for various items as follows: Section 3.2 requires payment of a fair share contribution to standard conditions and mitigations in accordance with Attachment 15B; Section 4.4.1 requires a contribution of \$16,000 per net developable acre to the West Oakland Community Fund; Section 4.4.2 requires participation rent in accordance with the terms of the ground lease (section 2.3.4(i)) and a contribution of a portion of project revenues to the West Oakland Community Fund in accordance with the terms of the ground lease (section 2.3.4(ii)); Section 4.5 requires a contribution of a portion of project revenues to the West Oakland Job Resource Center in accordance with the ground lease (section 2.3.4(iii)) and section 37.6 and Exhibit 37.6); and Section 5.1 requires payment of fair share costs of environmental analysis. Such payments were not previously internally authorized by Council action for acceptance and appropriation.

On April 8, 2016, Oakland Maritime, a related entity to OMSS, as tenant, entered into the Interim Lease with the City for use of a portion of the Property. OMSS pays \$5,474.38 per month in base rent to the City for the Interim Lease, which is currently in a month-to-month holdover period.

On August 31, 2017, pursuant to [Ordinance No. 13376 C.M.S.](#), the City and OMSS executed the First Amendment to the original LDDA (First Amendment), which, among other things, allowed the City access to the Interim Lease premises to pave a 327,000 square foot portion of the Property for truck parking. The City used a \$5 million Alameda County Transportation Commission grant ([Resolution](#) No. 86275 C.M.S.) to pay for this improvement.

On May 3, 2022, the City and OMSS executed a Second Amendment to the original LDDA (Second Amendment), as amended by the First Amendment, to revise the Schedule of Performance and establish the Outside Closing Date (each as defined in the LDDA) as May 1, 2023, in accordance with Section 10.7.2 of the LDDA. Since then, OMSS has been working to diligently satisfy the Schedule of Performance to meet the Outside Closing Date.

ANALYSIS AND POLICY ALTERNATIVES

LDDA Third Amendment

The Project consists of three main modules: (1) truck services; (2) convenience gas/food market; and (3) trans-load services.

The truck services module includes an 18,000 square foot truck maintenance facility with space for truck repair, tire and oil change, truck wash, bathrooms/showers and small office space. Additional services include a certified weigh station, truck fueling station, alternative fuel station (hydrogen fueling, electric charging), open parking spaces for up to 326 trucks (220 tractor, 106 container spaces), and two guard shacks with 24-hour surveillance.

The convenience gas/food services module consists of a 13,500 square foot building with a first-floor convenience market to provide convenience goods, beverages, and food services. The convenience market is not planning to sell alcohol. Additional first floor amenities include a truck parts sales area, a small laundry room facility, and restrooms with showers. The second floor will include office space that will be a mixture of traditional and open office footprint, with flexibility to divide into individual office spaces for future tenants. There will also be an auto fueling station with fueling bays and open parking space for at least 39 cars.

The trans-load services module consists of an approximately 14,000 square foot area for transferring goods from truck to truck. Currently, the space will be open air. In the future a loading dock and roof canopy may be built as well as a possible rail spur connection.

Since executing the Second Amendment, OMSS has made progress toward fulfilling its obligations under the LDDA, including development of 65 percent construction documents that

have been submitted in the form of five (5) building permit applications for initial improvements as required by the LDDA; submittal of a grading permit application; PX permit application and PZ permit application in support of the initial improvements; deposit of the remaining security deposit; and submittal of preliminary development budget and funding schedule. OMSS still needs to complete the permit process with the Planning and Building Department, and provide the City with 100 percent construction documents, the identity of the Guarantor, and evidence of financing all in support of closing escrow. Completion of these items will result in execution of a 55-year ground lease and commencement of construction by OMSS.

The recommended Third Amendment will extend the Outside Closing Date by one (1) year with a nonrefundable \$50,000 extension payment and will provide OMSS with the ability to continue its progress toward completing its Schedule of Performance tasks and lead to commencing construction of the Project. The Third Amendment also establishes the amounts of the Fair Share Contribution (as defined in the LDDA and the contribution to the West Oakland Community Fund that will be due under the LDDA. Specifically: the amount due under Section 3.2 is calculated to be \$431,749 for the fair share payment of standard conditions and mitigations and the amount due under Section 4.4.1 is \$267,200 for the contribution to the West Oakland Community Fund.

Approving the Third Amendment would allow for additional time for OMSS to meet its obligations under the ENA and clarify amounts due under the LDDA, which in turn, would enable the Project to be developed which would satisfy the City's obligation to BCDC to provide a 15-acre truck parking and truck services facility within the OAB Gateway Development Area. Therefore, approval of the requested action advances the Citywide priority of housing, economic, and cultural security.

Not entering into the recommended Third Amendment would not allow OMSS to fulfill its Schedule of Performance tasks, require the City to terminate the LDDA based on default by OMSS, and require the City to commence a competitive process to identify a replacement developer for the truck parking and truck services facility. The City would still be obligated to provide a 15-acre truck parking and truck services facility consistent with its obligation to BCDC, and satisfaction of that obligation would be significantly delayed.

Interim Lease Extension

Oakland Maritime submitted a request to staff to consent to a sublease with Nikola Properties, LLC, a California limited liability company (Nikola) for installation and operation of a mobile hydrogen facility by Nikola at the approximately five (5)-acre truck parking area currently leased to Oakland Maritime on an interim basis. Oakland Maritime and Nikola would be required to obtain all necessary permits from the City and other regulatory agencies prior to commencing installation and operation. Oakland Maritime and Nikola have negotiated a \$15,000 per month sublease rent to be paid to Oakland Maritime.

In support of entering into a sublease with Nikola for the mobile hydrogen facility, staff has negotiated terms for a one-year extension of the Interim Lease for which Oakland Maritime would pay 50% of the \$15,000 monthly rent to the City as additional rent under the Interim Lease beginning with the fourth (4th) month of the sublease and would be in addition to \$5,474.38 in base rent already paid by Oakland Maritime to the City under the Interim Lease. Staff recommends consenting to the sublease and supporting the mobile hydrogen facility as it would generate additional revenue for the City and is consistent with the City's Environmental Climate Action Plan (ECAP).

FISCAL IMPACT

The recommended Third Amendment would require OMSS to pay a nonrefundable \$50,000 extension payment that would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

Additionally, by enabling completion of the Project, the following payments required pursuant to the LDDA will be internally authorized for acceptance and appropriation:

- An approximately \$431,749 fair share payment, would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OAB Fair Share Project (1005263), OARB Bay Bridge Gateway Program (SC07).
- An approximately \$21,962.76 proportionate share payments, would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).
- An approximately \$267,200 West Oakland Community Fund payment plus an additional \$0.0025 per unit of energy sold above 850,000 gallons per year for contributions, would be accepted and appropriated to the Miscellaneous Trusts Fund (7999), Oakland Army Base Redevelopment Organization (85244), Pass Thru Assessments Account (24224), DP850 Administrative Project (1000019), OARB Bay Bridge Gateway Program (SC07).
- An additional \$0.0025 per unit of energy sold above 850,000 gallons per year would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Workforce Development Organization (85311), West Oakland Jobs Resource Center Project (1000036), OARB Bay Bridge Gateway Program (SC07).
- \$0.01 per unit of energy sold per year up to 850,000 units per year, and \$0.0025 per unit of energy sold above 850,000 units per year, would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization

(85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

The additional \$7,500 per month, beginning with the 4th month of the sublease, in rent under the Interim Lease would be accepted, together with the existing monthly rent received, to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

PUBLIC OUTREACH / INTEREST

The City and OMSS have conducted numerous outreach meetings with a variety of community organizations, neighborhood groups, and business groups as well as outside agencies regarding the proposed OMSS ancillary maritime support facility for truck parking and related truck services at the OAB. Redevelopment of the OAB, inclusive of the Project, was the subject of the Army Base Environmental Impact Report in 2002, which was updated in 2012 with an Addendum (Ordinance No. 13131 C.M.S.), that includes a comprehensive set of standard conditions of approval and mitigation monitoring and reporting program and numerous public hearings.

COORDINATION

The Economic & Workforce Development Department has coordinated its efforts with the City Administrator's Office, Bureau of Planning, Oakland Public Works, Oakland Department of Transportation, City Attorney's Office, and Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Redevelopment of the Property for services in support of Port operations should have substantial economic regional impacts which can be characterized in terms of net direct spending, total output, income and jobs. In addition, the project should have positive fiscal impacts which can be measured in both City and County tax revenue increases including property taxes, sales taxes and business taxes.

Environmental: Constructing the Project should enhance smart growth principles and keep Port-serving trucks in the Port Area, instead of traveling into West Oakland for services, all of which result in environmental benefits. Further, the Project intends to be a showcase of sustainable industrial infrastructure, including novel transportation energy solutions such as hydrogen fueling, biodiesel and electric charging as well as embracing new energy storage and distribution solutions. The Project will include significant solar electric power generation on site and include green infrastructure solutions such as vegetated buffers for air filtration that go above and beyond baseline City requirements. Amendment of the Interim Lease would enable third-party deployment of low-carbon hydrogen-fueled trucking in the Port area.

Race and Equity: The West Oakland neighborhood adjacent to the Property has long experienced environmental and economic equity issues and has been historically underserved. Providing additional time for OMSS to implement the tasks under the LDDA and construct the Project would ultimately provide positive health benefits to West Oakland by keeping trucks within the OAB rather than the West Oakland neighborhood and would provide economic stimulus to the neighborhood by preserving and creating additional local job opportunities.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This action is exempt under California Environmental Quality Act (CEQA) Guidelines section 15063(b)(3) (common sense exemption) since the action under consideration is limited to the Third Amendment to the LDDA and an extension of a lease, which are both extensions of existing real estate contracts with no possibility of an effect on the environment. On a separate and independent basis, any anticipated environmental effects of the Project were previously contemplated and adequately evaluated by the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report ("EIR"), as amended by the 2012 Addendum, together, the "2002 EIR/2012 Addendum". Therefore, in accordance with California Public Resources Code Section 21166 and CEQA Guidelines Section 15164, the 2002 EIR/2012 Addendum will comprise the full and complete CEQA evaluation necessary and no further CEQA evaluation will be required for this action.

ACTION OF THE CITY COUNCIL

Staff recommends that the City Council adopt the following pieces of legislation:

(1) An Ordinance Authorizing The City Administrator To Negotiate And Execute A Third Amendment To The Lease Disposition And Development Agreement (LDDA) Between The City Of Oakland And OMSS, LLC, For Development Of An Ancillary Maritime Support Facility For Truck Parking And Related Services At 10 Burma Road And 2307 Wake Avenue, To Extend The Outside Closing Date By One (1) Year With Payment Of A Nonrefundable Extension Payment Of \$50,000, And Establish The Amounts Of The Fair Share Contribution And A Contribution To The West Oakland Community Fund Required Under The LDDA; And Adopting California Environmental Quality Act Findings

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For questions regarding this report, please contact John Monetta, Project Manager II, at (510) 238-7125.

Respectfully submitted,



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