

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

7/11/19
Item No.: 6.6
EJP/msr
2019/10/20

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A 55-YEAR LEASE WITH SSS INVESTMENT GROUP LLC FOR AN INITIAL MINIMUM MONTHLY RENT OF \$31,333 FOR PROPERTY LOCATED AT APPROXIMATELY 1901-1995 EMBARCADERO ROAD, OAKLAND.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.6, dated July 11, 2019 (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; and

WHEREAS, Section 706 of the City Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide service for members of the public who use the waterfront, and is consistent with the Port's duty to use and manage Port property in trust for the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the proposed lease will not interfere with the Tidelands Trust; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland 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 hereby finds and determines as follows:

A. The Port owns approximately 2.84 acres of land on which sit 16 buildings and 3.77 acres of water area containing approximately 145 marina berths, on property located at approximately 1901-1995 Embarcadero Road, Oakland, which property is referred to as Embarcadero Cove (the "Premises"); and

B. The Premises were previously leased by Embarcadero Cove Enterprises, who had approximately 115 subtenants and who defaulted under its lease, abandoned the Premises, and filed for Chapter 7 bankruptcy; and

C. A bankruptcy trustee operated the Premises from December 2018 through April 2019 before returning the Premises to the Port; and

D. SSS Investment Group LLC ("SSS") desires to lease and operate the Premises, and the principals of SSS - Miae Song, Enoch Shin, and Young Chan Shin - are currently leasing the Premises through a Temporary Rental Agreement that commenced after the bankruptcy trustee relinquished the Premises to the Port; and

E. Port staff have negotiated and recommend entering into a Lease with SSS for the Premises under the following terms:

Premises: Approximately 2.84 acres of land on which sit 16 buildings and 3.77 acres of water area containing approximately 145 marina berths, on property located at approximately 1901-1995 Embarcadero Road, Oakland.

Parties: Port and SSS Investment Group LLC.

Permitted Use: Operate, maintain, and manage the Premises under its current types of uses.

Term: 55 years, commencing on August 1, 2019.

Minimum Rent: \$31,333 per month, subject to increases.

Rent Credit: Monthly credit of up to \$8,333 for 120 months beginning the second year of the Term in exchange for adequate performance of at least \$2 million in capital investment during the first 5 years of the Term and at least \$375,000 for every 5 years thereafter.

Percentage Rent: 15% and 8% of gross revenue generated from water areas and land areas, respectively, less minimum rent (after any rent credits) for the respective areas.

Rent Adjustments: 3% annual increases and 10% increases every 10 years.

Security Deposit: 3 times' minimum monthly rent, with personal guarantees from each of the three principals of SSS. After 10 years, the personal guarantees may be replaced with an additional 6 times' minimum monthly rent, which additional deposit shall be returned after an additional 10 years.

Subleases: Except for existing subleases and uses, subleases for a term of 5 years or more, and for over 1,500 square feet shall be subject to approval by the Executive Director and a nonrefundable \$1,000 administrative fee. All other subleases shall not require Port approval.

Assignments: All assignments are subject to approval by the Board and a nonrefundable \$5,000 administrative fee.

F. The Board further finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that entering into the requested agreement will not have a significant effect on the environment and therefore is not a "project" under CEQA.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed lease with **SSS Investment Group LLC** (and such additional documents as may be necessary to consummate the transaction) for the Premises located at approximately 1901-1995 Embarcadero Road, Oakland, as further described above and in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed lease is not fully executed within thirty (30) days after Board approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director or his designee.

Section 4. This ordinance 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. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed as 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.

DRAFT

President.

Attest: _____

Secretary.

Approved as to form and legality:

Port Attorney