

AGENDA REPORT

Ordinance: Approval of a First Amendment to a License & Concession Agreement with Hadal, Inc. for the Premises Located at 1363 Embarcadero Road (**CRE**)

MEETING DATE: 2/9/2017

AMOUNT: \$ 12,785.03 per month in rental payments to the Port over the five (5) year term Revenue

PARTIES INVOLVED: Hadal, Inc.

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

The subject of this Agenda Report is a request for authorization to approve a First Amendment to an existing License & Concession Agreement (“Agreement”) with Hadal, Inc. to extend the term of the Agreement by five years, with an additional option to extend for a second five-year period.

BACKGROUND

The Port owns property located at 1363 Embarcadero Road consisting of the following: approximately 10,804 square feet of warehouse space known as P-108, P-113, P-114 and warehouse/office space in P-104, in addition to approximately 33,354 square feet of paved and fenced land, and approximately 23,685 square feet of water area including boat ramp and docks (“Premises”). The Premises are currently leased to and occupied by Hadal, Inc. (“Tenant”), for storage of equipment used for the launch, recovery and in-site testing of deep ocean autonomous underwater vehicle systems (AUV). The Tenant has occupied the premises under a License and Concession Agreement (“Agreement”) since March 3, 2014. A site plan and map indicating the location of the premises is attached as Exhibit A to this report.

The Agreement will expire on February 28, 2017, after which the tenant would like to extend the term of the Agreement for five more years, effective March 1, 2017 and expiring on February

28, 2022, with one option to extend the Agreement for an additional five (5) years through February 28, 2027, subject to a one-time Fair Market Value rental adjustment.

ANALYSIS

The Tenant has expressed a desire to remain on the premises, subject to the same general terms and conditions of the current Agreement, for 5 more years and has requested an additional 5-year option to extend beyond. Staff proposes to continue this tenancy with the proposed First Amendment to the Agreement, which will allow the Tenant to continue occupying the space for 5 additional years at the target rental rate of \$12,785.03 per month, subject to a 3% increase annually, and subject to all other standard provisions of the form License and Concession Agreement, including a proportional increase in security deposit, Port termination rights upon 30 days' notice, and tenant responsibility for all utilities and maintenance and standard holdover provisions. At the end of the 5-year term, the Tenant will have one option to extend the Agreement for five (5) additional years through February 28, 2027 subject to a one-time Fair Market Value rental adjustment described above followed by the usual 3% annual increases.

Staff believes that the continued occupancy of this space by the Tenant will help to deter theft and vandalism of the property, is an appropriate and beneficial use of this existing asset, and that the rental rate is consistent with the Port adopted Target Rental Rates. Furthermore, the extension of term for this tenancy will enable the Port to receive revenue from this property without interruption by any period of potential vacancy and enable a local business to remain on the Premises. Based on the analysis above, staff recommends approval of the proposed First Amendment to the License and Concession Agreement, based upon the terms and conditions stated within this Agenda Report.

BUDGET & STAFFING

The proposed amendment will result in \$10,856 of additional revenue for FY2017. The proposed action does not have any staffing impact as this tenancy agreement is currently managed by existing Commercial Real Estate Division staff.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The work performed under this contract is in the Commercial Real Estate area and is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA). The provisions of the MAPLA do not apply to this work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal A: Objective 1: Maximize the use of existing assets.

- Goal B: Objective 1: Retain existing customers and tenants.

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 this matter because tenancies outside of the Aviation and Maritime areas with entities that do not principally provide aviation or maritime services are excluded from the Living Wage Regulations.

ENVIRONMENTAL

CEQA: The proposed first amendment to the License & Concession Agreement with Hadal, Inc., has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15300.4, which exempts the execution of leases or other Agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. Approval of the proposed Amendment between the Port and Hadal, Inc. falls within this class of exemptions. No additional environmental review is required to take the action recommended in this Agenda Report.

BCDC Permit: Hadal, Inc. will comply with the requirements of Bay Conservation and Development Commission (BCDC) permit M1999.028.02, which requires fencing, access pathways, signage and gates to provide public access to this property, and the adjacent property to the east.

GENERAL PLAN

The Premises appear to conform to the policies of the General Plan. The Premises are within City of Oakland planning jurisdiction, and as such, the City of Oakland would make an official finding as part of any zoning approvals necessary for continuation of the proposed use.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

- Approve the proposed First Amendment to extend the term of the existing License & Concession Agreement with Hadal, Inc., subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not approve the proposed First Amendment to extend the term of the existing License & Concession Agreement with Hadal, Inc., which will result in the continuation of the License and Concession Agreement on a month-to-month basis in holdover

status and may result in a potential vacancy within the CRE portfolio in the near future;
or

- Approve the proposed First Amendment to extend the term of the existing License & Concession Agreement with Hadal, Inc., but subject to different terms and conditions than those contained within this Agenda Report, which depending on the nature of those changes, may require further negotiation with the Tenant.

RECOMMENDATION

It is recommended that the Board approve the proposed First Amendment to extend the term of the existing License & Concession Agreement with Hadal, Inc. through February 28, 2022, located at 1363 Embarcadero Road at a rent of \$12,785.03 per month, subject to 3% annual increases, and grant a one-time option to extend the term for an additional 5 years subject to a Fair Market Value rental adjustment, and all other standard terms of the form License and Concession Agreement, and authorize the Executive Director or his designee to approve and execute such agreements and such additional documents as may be necessary to consummate the transaction contemplated in this Agenda Report, subject to approval by the Port Attorney as to form and legality. It is further recommended that the subject approval be valid for no longer than 30 days from the date of Board approval, and that if the subject First Amendment to the License & Concession Agreement is 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 his designee.

Attachment: Exhibit A – Site Map of 1363 Embarcadero