

AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Execute a Lease with SSS Investment Group LLC for a 55-Year Term at an Initial Minimum Monthly Rent of \$31,333 for Property Located at 1901-1995 Embarcadero Road, Oakland. **(CRE)**

<u>MEETING DATE:</u>	7/11/2019
<u>AMOUNT:</u>	\$31,333 (Initial Minimum Monthly Rent) Revenue
<u>PARTIES INVOLVED:</u>	SSS Investment Group LLC Miae Song, Enoch Shin, and Young Chan Shin
<u>SUBMITTED BY:</u>	Pamela Kershaw, Director of Commercial Real Estate
<u>APPROVED BY:</u>	J. Christopher Lytle, Executive Director
<u>ACTION TYPE:</u>	Ordinance

EXECUTIVE SUMMARY

This item requests approval of a Lease to operate, manage, and maintain the premises known as Embarcadero Cove, which includes managing subtenants with various types of uses (marina berths, restaurant, and various office and small retail) for a term of 55 years.

BACKGROUND

The Port owns approximately 2.84 acres of land and buildings, and 3.77 acres of water area on property located at approximately 1901-1995 Embarcadero Road, which is adjacent to the Livingston Street Pier, referred to as Embarcadero Cove ("Premises"). A site map showing the location of the property is attached to this report. The property contains approximately 145 marina berths and 16 small buildings, currently occupied by approximately 115 subtenants of the previous Lessee, Embarcadero Cove Enterprises, who defaulted under their Lease, abandoned the property and filed for Chapter 7 bankruptcy. A bankruptcy trustee operated the Premises from December 2018 through April 2019 before returning the Premises to the Port. The Port is separately pursuing damages caused by the prior Lessee via litigation.

The members of SSS Investment Group LLC ("SSS") bring a combined 68 years of successful business ownership, property management, operation, sales, and marketing experience. Their experience includes 28 years of business ownership in Oakland, and they have partnered with a seasoned property management company and marina manager for the subject Premises. The Premises are currently leased through a Temporary Rental Agreement to the principals of SSS – Miae Song, Enoch Shin, and Young Chan Shin – which commenced after the bankruptcy

trustee relinquished the Premises to the Port, and extends through October 28, 2019. SSS would like to enter into a long-term Lease agreement with the Port for the Premises.

ANALYSIS

SSS and Port staff have met on numerous occasions to negotiate the terms of a potential long-term Lease for the Premises. The proposed key business terms of the Lease proposed for Board consideration are as follows:

- Parties: The Port and SSS Investment Group LLC.
- Premises: Approximately 2.84 acres of land and buildings, and 3.77 acres of water area on Port property north of the Livingston Street Pier and south of Central Basin, referred to as Embarcadero Cove as indicated in Exhibit A.
- Term: 55 years, commencing on August 1, 2019.
- Rent:
 - a) Minimum Monthly Rent: \$31,333 per month.
 - b) Rent Credit for Improvements: In exchange for Lessee performing at least \$2 million in capital investment in the first 5 years of the Term, and \$375,000 every 5 years thereafter, the Port shall provide a rent credit not to exceed \$8,333 per month, starting in the second year of the Term, and continuing for the next 120 months of the Term, upon submittal of proof of payment of costs to address deferred maintenance at the property and upgrade the Premises into first-class condition, based on a list of acceptable repairs and improvements.
 - c) Percentage Rent: In addition to Minimum Monthly Rent, SSS shall pay to the Port 15% of gross revenues generated from the water areas, less the net rent (after Rent Credit for Improvements), plus 8% of gross revenues generated from the land areas, less the net rent (after Rent Credit for Improvements).
 - d) Rent Adjustments: 3% annual increases, and 10% increase every 10 years.
- Security Deposit: \$93,999 (3 times' the monthly minimum rent) and personal guarantees for each of the three principals of SSS. After 10 years, the personal guarantees may be replaced with an additional deposit of 6 months' worth of the monthly rent; such additional deposit shall be returned to SSS after an additional 10 years.
- Maintenance and Improvements: No Port maintenance or improvement responsibilities. SSS is responsible for all maintenance and all utilities within the Premises.

- Proposed Use: SSS shall lease and wholly operate and manage the entire Premises under its current types of uses as master Lessee, managing building and berth subleases and maintaining the Premises (including all buildings, driveways, parking lots, common areas, paths, docks, utilities, and other improvements currently on the Premises) on a day-to-day basis.
- Subleases: Except for subleases to existing subtenants and uses, subleases for a term of 5 years or more and for over 1,500 square feet, shall be subject to Port for review and approval by the Port's Executive Director or designee, and subject to a nonrefundable administrative fee of \$1,000 for each such request. All other subleases shall not require Port approval.
- Assignment: No assignment of the Lease without approval of the Board of Port Commissioners, and subject to a nonrefundable administrative fee of \$5,000 for such requests.

Staff believes that the proposed rent of the property is reasonable compared to other properties of similar size, complexity, and condition. The minimum rent is an increase from the rent paid by the previous Lessee, and the agreement incorporates both a minimum rent structure as well as a percentage rent formula, with 3% annual increases, and a 10% increase every 10 years. SSS has committed to spending \$2 million in the first 5 years of the term to perform capital improvements and deferred maintenance repairs that are necessary due to neglect by the prior Lessee, in exchange for the negotiated rent credit from the Port.

Staff believes that the proposed Lease will be a substantial upgrade to the Premises, as SSS has committed to bringing expert resources to renovate and revitalize Embarcadero Cove and revive the area, increase the number of quality businesses, and create a high traffic tourist attraction for this iconic location. Staff believes that the proposed Lease provides an opportunity for better utilization of this Port asset and recommends approval of a Lease with SSS Investment Group LLC.

BUDGET & STAFFING

The proposed Lease will result in additional revenue of \$126,863 for the recently adopted FY 2020 budget. The proposed action does not have any staffing impact, as the property is currently managed by CRE staff, and will continue to be so managed with the approval of the proposed Lease.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The work performed under this contract is in the Port's Commercial Real Estate area and is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA). Therefore, 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 Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Modernize and Maintain Infrastructure
- Goal: Grow Net Revenue

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.

SUSTAINABILITY

SSS has not proposed any development for the leased area. If SSS decides to develop the site in the future, SSS must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA). The CEQA Guidelines, Section 15061(b)(3) ("the general rule") states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Executing a Lease with a Lessee to operate, manage and maintain the premises known as Embarcadero Cove will not have a significant effect on the environment and therefore is not a project under CEQA. No further environmental review is required.

GENERAL PLAN

The project appears to conform to the policies of the General Plan. The project is within City of Oakland planning jurisdiction, and they will make an official finding as part of any requested zoning approvals.

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 Lease with SSS Investment Group LLC subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not approve the proposed Lease, which will result in the Premises not having a long-term Lessee for the Premises, which would likely result in a loss of revenue and further deterioration of the Premises; or
- Approve the proposed Lease with SSS Investment Group LLC, but subject to different terms and conditions than those contained within this Agenda Report, which, depending on the nature of those changes, may not be acceptable to SSS.

RECOMMENDATION

It is recommended that the Board approve a fifty-five (55) year Lease with SSS Investment Group LLC for an initial minimum monthly rent of \$31,333 for the premises located at 1901-1995 Embarcadero Road 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 Lease 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 Embarcadero Cove