

EP

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 19-32

**RESOLUTION APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO EXECUTE AN EXCLUSIVE
NEGOTIATION TERM SHEET WITH ATHLETICS
INVESTMENT GROUP LLC, DBA THE OAKLAND
ATHLETICS, A CALIFORNIA LIMITED LIABILITY
COMPANY, FOR A TERM OF FOUR YEARS FOR AN
INITIAL PAYMENT OF \$100,000 FOR PROPERTY
LOCATED AT 1 MARKET STREET, OAKLAND.**

WHEREAS, the Port is a department of the City of Oakland ("City") established in 1927 by amendment to the Charter of the City of Oakland, which vested exclusive control and management of the Port in the Board of Port Commissioners ("Board");

WHEREAS, the Port's purpose is to promote and ensure the comprehensive and adequate development of the Port Area through continuity of control, management, and operation, including those lands held by the City under state legislative grants within the Port Area;

WHEREAS, the Board has reviewed and evaluated the Agenda Report for Agenda Item No. 6.1, dated May 13, 2019 and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, that 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;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that:

A. The Port seaport area operations comprise of approximately 1,300 acres of seaport operations, including container ship terminals, wharfage, warehousing and ancillary services, rail, and security facilities, including the Howard Terminal.

B. The Howard Terminal property located at 1 Market Street, Oakland ("Property") is approximately 50 land acres owned by the Port and includes two deep-water berths adjacent to the Inner Harbor Channel. It is approximately bounded by the Inner Harbor to the

south, Schnitzer Steel to the west, Embarcadero West to the north, and Clay Street to the east.

C. The State conveyed portions of the Howard Terminal Property to the City by the legislative grants to hold and manage in trust for the benefit of the statewide public. Other portions of Howard Terminal were acquired by the City and the Port and held as state lands trust assets. All granted trust lands and trust assets are held by the Port in trust, the uses of which are subject to oversight by the California State Lands Commission ("State Lands Commission").

D. Because of its small size (approximately 50 acres) and shallow water depth relative to other modern container terminals, older container gantry cranes, and limited room for expansion (e.g., it is separated from the next nearest marine terminal by private land holdings), Howard Terminal is not desirable for loading and unloading of the larger container ships that call the Port. Marine terminal operations at the Howard Terminal Property ended in 2014 when SSA Terminals relocated the operations of the former APL/EMS Terminal.

E. Without changes to one or more of these current physical limitations, Howard Terminal is better suited to uses such as container operations for smaller vessel services that currently call other terminals; bulk operations; break-bulk operations; and roll-on / roll-off operations.

F. Since 2013, the Port identified and engaged with interested parties for potential long-term tenancies associated with these types of vessel loading/unloading operations, but these discussions did not materialize into leasing arrangements for a variety of reasons.

G. Howard Terminal is currently being used for deep water vessel layup berthing, truck and container parking/depot operations, trucking companies, training of longshore workers by the Pacific Maritime Association, and similar ancillary logistics services that support Port operations.

H. Use and development of the Property for both maritime and non-maritime activities, including for the development and operation of a baseball stadium proposal, has been discussed previously, and a summary timeline of some key events that have occurred affecting the Property since 2013 is provided below:

1. **July 2013:** The Port approves early termination of the container terminal lease with SSA Terminals, LLC (SSAT) for Howard Terminal.
2. **October 2013:** The Port issues a Request for Proposals ("RFP") to solicit maritime use proposals for Howard Terminal.
3. **January 2014:** SSAT vacates the Howard Terminal Property and relocates their operations to other Port--owned property within the seaport, and Port staff begin executing short-term tenancy agreements for maritime support uses on the Property while concurrently marketing the Property for longer term maritime uses (both containerized and non-containerized).

4. **February 2014:** The Port receives three maritime use proposals for Howard Terminal in response to the Howard Terminal RFP, and rejects all three proposals for various reasons.
5. **March 2014:** The Port approves and authorizes execution of an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC to negotiate terms of a potential baseball stadium development on the Property.
6. **November 2014:** Oakland Waterfront Ballpark, LLC requests early termination of the Exclusive Negotiating Agreement with the Port.
7. **November 2014 - April 2018:** The Port engages in discussions with various potential marine-oriented users of Howard Terminal but these discussions do not result in the approval of any long-term tenancy agreements for the Property.
8. **July 2017:** The Oakland Athletics announce that they are investigating 3 sites for a potential new baseball stadium development in Oakland (Laney College site, Howard Terminal site, Coliseum site).
9. **January 2018:** Oakland Athletics contact the Port to discuss an Exclusive Negotiating Agreement ("ENA") to study a potential baseball stadium development at the Howard Terminal Property.
10. **April 26, 2018:** The Port approves a one-year ENA with Athletics Investment Group LLC dba the Oakland Athletics, a California limited liability company ("Oakland A's") for the Howard Terminal Property.

I. The City wishes to retain the Oakland Athletics professional baseball franchise in the City, and has identified the Howard Terminal Property as a potential site for a new, state-of-the-art Major League Baseball park. The Oakland A's have also identified the Howard Terminal Property as their preferred location.

J. The Howard Terminal Property is located near bus, rail, and water transit facilities and is proposed to be designed to maximize opportunities for non-automobile modes of travel, pursuant to the policies and regional vision included in the Sustainable Communities Strategy Plan Bay Area 2040 that the Metropolitan Transportation Commission and the Association of Bay Area Governments adopted in 2017 pursuant to Government Code section 65080.

K. Chapter 959 of the Statutes of 2018 established special procedures and expedited review under the California Environmental Quality Act ("CEQA") for the Stadium Mixed Use Project ("Project"), provided that the Project meets certain conditions, as detailed in that act. The Board may consider the approval of the Stadium Mixed Use Project only after the consideration, certification, and adoption, if any, of the EIR. The City is the CEQA lead agency.

L. Additionally, any change in use from the current industrial seaport use to uses under the Stadium Mixed Use Project may be approved only if the City amends the City's General Plan to allow such uses.

M. Under the ENA, the Port has been negotiating with the Oakland A's on terms and principles under which the parties would proceed with further negotiations and consideration of property rights and other considerations for the development of the Stadium Mixed Use Project.

N. The ENA has expired. The Port and the Oakland A's now wish to agree to memorialize preliminary terms by the Exclusive Negotiation Term Sheet ("Term Sheet") and to continue to negotiate exclusively toward consideration of later binding agreements only after the City's amendment of the General Plan and the Board's consideration of a final EIR, and subject further to legislative, State Lands Commission, and regulatory approvals and permits for the proposed uses.

Section 2. Based upon the information contained in the Agenda Report and in testimony received, the Board also finds and determines that the requested approval of the Term Sheet is exempt from CEQA under Section 15378(a) of the CEQA Guidelines in that the approval of the Term Sheet is not a project but rather merely commits the Port and the Oakland A's to a limited period of and provides a framework for continued exclusive negotiations regarding the Property, does not bind or commit either party to a future course of action, and does not include the approval of any project or change in land use pattern for the Property. As required by Section 15004(b)(4) of the CEQA Guidelines, and as described in the Agenda Report, the Term Sheet does not grant any vested development entitlements and:

- A. Conditions the Term Sheet on compliance with CEQA;
- B. Does not bind or commit the Port or the Oakland A's to any definite course of action prior to CEQA compliance;
- C. Does not restrict the Port from considering any feasible mitigation measures and alternatives, including the "no project" alternative; and
- D. Does not restrict the Port from denying the Project.

Section 3. The Board hereby:

A. Approves the proposed Exclusive Negotiation Term Sheet with **Athletics Investment Group LLC, dba the Oakland Athletics**, a California Limited Liability Company, for a term of four years and an initial annual payment amount of \$100,000.00 for exclusive negotiations for property located at 1 Market Street, Oakland, as further described in the Agenda Report; and

B. Authorizes and directs the Executive Director to: (i) execute the proposed Exclusive Negotiation Term Sheet, subject to approval as to form and legality by the Port Attorney; and (ii) make such minor additions, modifications, or corrections as necessary to implement the Exclusive Negotiation Term Sheet or to correct errors, subject to the limitations set forth herein and provided that any such addition,

modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report; and

C. Conditions its authorization such that, if the proposed Exclusive Negotiation Term Sheet 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.

Section 4. This resolution 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. This resolution approves and authorizes the execution of a contract in accordance with the terms of this resolution. Unless and until a separate written contract is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective contract.

Section 5. This resolution shall be effective immediately upon adoption by the Board.

At the special meeting held on May 13, 2019

Passed by the following vote:

Ayes: Commissioners Colbruno, Cluver, Lee, Leslie, Martinez, Story and President Butner – 7

Noes: – 0