

AGENDA REPORT

Resolution: Approval of an Exclusive Negotiating Agreement with East Bay Regional Parks District for Property Located at 1441-1551 Embarcadero Road, Oakland **(CRE)**

MEETING DATE: 6/22/2017

AMOUNT: \$13,800.00 (One-Time Deposit)
Revenue

PARTIES INVOLVED: East Bay Regional Parks District, Oakland, CA
Robert E. Doyle, General Manager

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This matter is a request for approval of an Exclusive Negotiating Agreement (“ENA”) with the East Bay Regional Parks District (“EBRPD”) for property located at 1441-1551 Embarcadero Road, formerly known as the Crowley Site. The purpose of the ENA is to allow EBRPD to conduct due diligence on the property to determine the suitability of the site for lease by EBRPD for a regional recreational trail staging area. The ENA includes a one-time deposit to the Port, which is refundable in certain circumstances or partially credited toward future lease payments if a lease of the property is ultimately approved by the EBRPD and the Port. The term of the ENA is for approximately 9 months.

BACKGROUND

The Port owns a property of approximately 1.7 acres in size located at 1441-1551 Embarcadero Road that has been vacant for the past 15+ years. The property is a small rectangular parcel abutting the Oakland Estuary on both the southern and eastern sides of the site, and fronting on Embarcadero Road to the north. An underwater marine surveying tenant, Hadal Inc., is located immediately to the west of the site on an adjacent parcel. An aerial photo of the property is attached as Exhibit A for reference.

In February of 2017, EBRPD submitted a letter to the Port expressing interest in negotiating the potential terms of an ENA for the property to determine the suitability of the site for potential future development of a trail staging area under long term lease from the Port. For the past several months Port staff and EBRPD staff have been negotiating the potential terms

of an ENA for the property along with the potential key business terms of a possible future long term lease of the site.

ANALYSIS

The proposed ENA would enable EBRPD time to conduct further due diligence of the existing site conditions, prepare conceptual site plans and trail staging designs, develop preliminary schedules for construction of improvements, and refine construction and operational costs for the potential future long term lease of the property, among other matters. The proposed ENA contains a term length of approximately 9 months, and terminates by April 1, 2018, unless substantial agreement has been reached on the terms of a potential lease of the property and some additional time is needed to schedule the matter for consideration by the EBRPD Board and/or the Board of Port Commissioners, for which an additional 60 days is provided. The ENA also requires that EBRPD provide an initial deposit in the amount of \$13,800.00 at the time of execution of the ENA, which is refundable under certain circumstances within the first six months of the ENA, and is also partially credited in an amount up to 3 months' worth of future rent payments if a lease is ultimately executed by the Port and EBRPD.

A copy of the draft ENA is attached to this report for reference as Exhibit B, which also includes some key business terms of a potential long-term lease for the site. During the term of the ENA, the Port and EBRPD will further refine the proposed terms of a lease for the property in addition to EBRPD conducting further site studies and conceptual planning for the site. Approval of the proposed ENA does not commit the Port or EBRPD to a lease of the property and any future lease proposal will require subsequent consideration by the Boards of both EBRPD and the Port at a future meeting date if such negotiations are successful during the term of the ENA. However, approval of the ENA does prohibit the Port from negotiating a potential lease of the property with any other parties during the ENA term, other than the rights previously granted to the City of Oakland in May of 2016 pursuant to a Right of Entry which allows the City to construct the waterfront trail on a portion of the property.

As the subject site is a relatively small parcel that has been vacant for numerous years, staff believes that the proposed ENA with EBRPD is an appropriate one that may facilitate negotiation of a future long term lease of the property which will result in new revenues from the site as well as new improvements constructed on the premises. Based on the terms and conditions stated within this agenda report, staff recommends approval of the proposed ENA with EBRPD.

BUDGET & STAFFING

The proposed ENA includes a one-time deposit to the Port in the amount of \$13,800.00 which is refundable under certain circumstances. If a long term lease of the property is ultimately approved by the Board prior to termination of the ENA, EBRPD will be allowed 3 months credit towards future rent payments drawn from the ENA deposit. In the event no agreement is reached by the end of the ENA term, the Port retains the full amount of the deposit.

As this site is currently vacant and no revenues have been included in the current budget from this property any portion of the deposit retained by the Port will result in additional revenues beyond those currently assumed in the budget.

There is no staffing impact from the proposed action as the property is currently managed by existing CRE Division staff.

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 Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

Goal A: Create Sustainable Economic Growth for the Port and Beyond

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

Goal G: Sustain Healthy Communities through Leading Edge Environmental Stewardship

Goal G: Objective 4: Continue to provide quality public access and open space at a financially-sustainable level.

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 Determination: California Environmental Quality Act (CEQA) Guidelines Section 15378(2) states that "Project" means the whole of an action that has a potential for resulting in either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The general rule in Section 15061(b)(3) of the Guidelines additionally states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. Because it can be seen with certainty that there is no possibility that executing an ENA with EBRPD will have a significant effect on the environment, the action is not a "Project" under CEQA, and is not subject to CEQA under the General Rule Exclusion.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

- Approve the ENA with EBRPD for the property located at 1441-1551 Embarcadero Road, subject to the terms and conditions contained within this Agenda Report. This is the recommended action.
- Do not approve the ENA with EBRPD for the property located at 1441-1551 Embarcadero Road, which may result in the property remaining vacant.
- Approve the ENA with EBRPD for the property located at 1441-1551 Embarcadero Road, but subject to different terms and conditions than those contained within this Agenda Report, which depending on the nature of those alternative terms, may not be acceptable to EBRPD.

RECOMMENDATION

Staff recommends that the Board adopt a resolution authorizing the Executive Director to execute an Exclusive Negotiating Agreement with East Bay Regional Parks District for property located at 1441-1551 Embarcadero Road, subject to the terms and conditions stated within this Agenda Report, and subject to the Port Attorney's approval as to form and legality.

Attachments: Exhibit A- Site Map
Exhibit B – Draft ENA