

## BOARD OF PORT COMMISSIONERS CITY OF OAKLAND

RESOLUTION APPROVING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH THE EAST BAY REGIONAL PARK DISTRICT FOR A LONG TERM GROUND LEASE OF PROPERTY LOCATED AT 1441-1551 EMBARCADERO ROAD, FORMERLY KNOWN AS THE CROWLEY SITE.

**WHEREAS**, the Board has reviewed and evaluated the Agenda Report Item No. 6.5 dated June 22, 2017 ("Agenda Report") and related agenda materials, has received the expert testimony of 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.** The Board hereby finds and determines as follows:

A. The Port owns approximately 1.7 acres of a small rectangular parcel abutting the Oakland Estuary located at 1441-1551 Embarcadero Road (the "Property") which has been vacant for the past 15 years; and

B. In February 2017, the East Bay Regional Park District ("EBRPD") submitted a letter to the Port expressing interest in entering into an Exclusive Negotiating Agreement ("ENA") with the Port to allow EBRPD (i) negotiate a ground lease and (ii) assess the potential feasibility of developing a passive, regional recreational open space and trail staging area; and

C. The proposed ENA will be for a term of 9 months, terminating on April 1, 2018, unless substantial agreement is reached on the terms of a new ground lease and additional time is needed for EBRPD Board and/or the Port Board's approval, for which an additional 60 days is provided; and

D. The proposed ENA will require EBRPD to deposit with the Port \$13,800.00 upon execution of the ENA, which deposit will be refundable under certain circumstances and will be partially credited towards the first 3 months' rent if a ground lease is agreed upon and executed by the parties; and

E. Port staff recommends entering into the ENA because the Property is relatively small and has been vacant for numerous years, and the ENA may lead to future new revenues from the site as well as new improvements constructed on the Property; and

F. Based upon the information contained in the Agenda Report and testimony received, the Board hereby finds and determines that an Exclusive Negotiating Agreement with **the East Bay Regional Park District** is in the best interests of the Port; and

G. The proposed ENA has been evaluated pursuant to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines as adopted by the Port (the "CEQA Guidelines"). Section 15378(2) of the CEQA Guidelines states that a "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. Section 15061(b)(3) of the CEQA Guidelines provides the general rule that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that executing an ENA with EBRPD to (i) negotiate a ground lease and (ii) assess the potential feasibility of developing a passive, regional recreational open space and trail staging area will have a significant effect on the environment. Accordingly, the approval of the proposed ENA is not a "Project" under CEQA and is not subject to CEQA under the General Rule exclusion.

**SECTION 2.** The Board hereby:

A. Approves the proposed ENA with EBRPD as described hereinabove and in the Agenda Report; and

B. Authorizes the Executive Director to (i) execute the ENA, 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 ENA 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.

**SECTION 3.** 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. Unless and until a separate written agreement 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 agreement.

**SECTION 4.** This resolution shall be effective immediately upon adoption by the Board.

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