

## AGENDA REPORT

**Ordinance:** Approval of a Ten-Year License and Concession Agreement for a Monthly Rental Rate of \$5,871 with T-Mobile West, LLC for a Telecommunications Facility Located at 101 Washington Street **(CRE)**

**MEETING DATE:** 10/12/2017

**AMOUNT:** \$5,871 per month rent with 3% annual increases  
Revenue

**PARTIES INVOLVED:** T-Mobile West, LLC

**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 ten-year License and Concession Agreement with T-Mobile West, LLC for existing telecommunication antennas and equipment on the roof of the Washington Street Garage, located at 101 Washington Street.

### **BACKGROUND**

The Port owns property located at 101 Washington Street, a public parking structure known as the Washington Street Garage. A portion of the 7<sup>th</sup> floor roof of the property, comprised of approximately 120 square feet ("Premises"), is currently occupied by T-Mobile West, LLC ("Tenant") to operate and maintain an unstaffed telecommunications facility. The Tenant was operating on the Premises under a Lease that expired on October 31, 2016, and transitioned to a Temporary Rental Agreement while an extension of a potential long-term agreement was being negotiated. The Temporary Rental Agreement expires on October 31, 2017, and the Tenant would like to continue to occupy the Premises for an additional ten years. A site plan and map indicating the location of the equipment on the Premises is attached as Exhibit A to this report.

## **ANALYSIS**

In order to continue to provide telecommunications service to the Jack London District waterfront area, the Tenant requires a place to maintain and operate telecommunications equipment and antennas. The Tenant has been discussing the potential terms of a new longer-term rental agreement with Port staff for several months. Staff proposes to continue this tenancy with a ten year License and Concession Agreement at the rental rate of \$5,871 per month, and subject to other key business terms and all other standard provisions of the form License and Concession Agreement. The key business terms of this proposed License and Concession Agreement are summarized below:

- Parties: The Port and T-Mobile West, LLC.
- Premises: A designated portion of the 7th floor at 101 Washington Street approximately 120 square feet in size.
- Term: November 1, 2017 to October 31, 2027.
- Rent: \$5,871 per month with 3% annual increases.
- Security Deposit: \$17,613, or three (3) times the monthly rent.
- Maintenance: Tenant is responsible for all maintenance and operation of equipment within the Premises. There are no proposed Port maintenance responsibilities.
- Proposed Use: Unstaffed telecommunications facility.

Staff believes that the continued occupancy of this space 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, this tenancy will enable the Port to receive revenue from this property, which is not otherwise a rentable area, and will assist the Tenant with the ability to provide cellular coverage to the area. Based on the analysis above, staff recommends approval of the proposed License and Concession Agreement subject to the terms and conditions stated within this Agenda Report.

## **BUDGET & STAFFING**

The proposed License and Concession Agreement will result in \$1,368 of unbudgeted revenue for FY2018. 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.portofoakland.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 Determination: The proposed License and Concession Agreement with T-Mobile West, LLC has been determined to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. No changes to the premises or use are proposed.

## **GENERAL PLAN**

The Premises appear to conform to the policies of the General Plan. The Premises are within City of Oakland planning jurisdiction, and they 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 License and Concession Agreement with T-Mobile West, LLC, subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not approve the proposed License and Concession Agreement with T-Mobile West, LLC, which will likely result in a vacancy of this space within the CRE portfolio; or
- Approve the proposed License and Concession Agreement with T-Mobile West, LLC, 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 License and Concession Agreement with T-Mobile West, LLC for the Port owned property located at 101 Washington Street for a 10 year term, at a rent of \$5,871 per month, and subject to all other terms and conditions as stated within this Agenda Report and including 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 License and 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**