

AGENDA REPORT

Ordinance: Approval of a First Amendment to a License & Concession Agreement with Brotzeit-Lokal, LLC to Extend the Term for an Additional Five Years at a Monthly Rental Rate of \$4,753 for the Premises Located at 1000 Embarcadero Road **(CRE)**

MEETING DATE: 10/26/2017

AMOUNT: \$4,753 per month with 3% annual increases
Revenue

PARTIES INVOLVED: Brotzeit-Lokal, 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 First Amendment to an existing License and Concession Agreement (“Agreement”) with Brotzeit-Lokal, LLC for a restaurant located at 1000 Embarcadero Road. The First Amendment will document the extension of the term of the Agreement for an additional five years at a new monthly rental rate.

BACKGROUND

The Port owns property located at 1000 Embarcadero Road, comprised of approximately 2,090 square feet (“Premises”), currently occupied by Brotzeit-Lokal, LLC (“Tenant”) who operates a restaurant on the Premises. The Tenant currently occupies the Premises under a License and Concession Agreement that expires on May 31, 2018. The Agreement provides for an option to extend the term for an additional five years at the greater of the current monthly rent paid by the Tenant or Fair Market Value. The Tenant sent the Port a notice expressing their desire to exercise the option in August of 2017. The Port and Tenant now seek to amend the Agreement to memorialize the extended term and amended rental provisions in order to allow the Tenant to continue to occupy the Premises for an additional five years. A site plan and map indicating the location of the Premises is attached as Exhibit A to this report.

ANALYSIS

The Tenant has exercised the first of two options to extend the term of the Agreement and remain on the Premises for an additional five years. Upon exercising the option, the Agreement states that rent would be set for the option term at the higher of the then-current rent or the fair market rental rate for the Premises. Port staff and the Tenant have negotiated the key business terms of a proposed First Amendment to the Agreement to document the option extension, which are summarized below:

- Parties: The Port and Brotzeit-Lokal, LLC.
- Premises: A restaurant located at 1000 Embarcadero Road.
- Term: June 1, 2018 to May 31, 2023 (an additional five years).
- Rent: \$4,753 per month with 3% annual increases (which represents an increase of \$1,000 per month from the existing monthly rental rate of \$3,753).
- Percentage Rent: 5.5% of gross sales less minimum rent (which is a change from the existing rate of 4.5% of gross sales over \$100,000 and 5.5% of gross sales over \$200,000, which is a change to the benefit of the Port with respect to payment of Percentage Rent).
- Security Deposit: \$10,005. (The existing Agreement states that only the amount of rent paid to the Port shall be the subject of negotiations when exercising an Option, thus the Security Deposit must remain unchanged, which is less than three times the new monthly minimum rent.)
- Maintenance: Tenant is responsible for all maintenance of the Premises. There are no proposed Port maintenance responsibilities.
- Proposed Use: Restaurant.

In addition to the key business terms above, the Agreement is also subject to all of the standard provisions of the existing License and Concession Agreement.

Staff believes that the proposed First Amendment will retain an important tenant in the Commercial Real Estate portfolio, will help to deter theft and vandalism of the property, and that the continued operation of this business is an appropriate and beneficial use of this existing asset. Furthermore, the proposed new option rental rate is consistent with the Port adopted Target Rental Rates for the premises, which are based upon the fair market rental rate, and the extension of term for this tenancy will enable the Port to receive revenue from this property without interruption by any period of potential vacancy for the next five years.

Based on the analysis above, staff recommends approval of the proposed First Amendment to the License and Concession Agreement, based upon the terms and conditions stated within this Agenda Report.

BUDGET & STAFFING

The proposed amendment will result in \$1,000 of additional revenue for FY2018 since the new option rental rate does not take effect until June 1, 2018.

The proposed action does not have any staffing impact.

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: The proposed First Amendment to the License & Concession Agreement with Brotzeit-Lokal, LLC has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, 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. Approval of the proposed Amendment between the Port and Brotzeit-Lokal, LLC falls within this class of exemptions, as no changes

to the premises or use are proposed. No additional environmental review is required to take the action recommended in this Agenda Report.

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 will 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 First Amendment to extend the term of the existing License & Concession Agreement with Brotzeit-Lokal, LLC, subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not approve the proposed First Amendment to extend the term of the existing License & Concession Agreement with Brotzeit-Lokal, LLC, which may result in a potential vacancy within the CRE portfolio in the near future; or
- Approve the proposed First Amendment to extend the term of the existing License & Concession Agreement with Brotzeit-Lokal, 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 the Tenant.

RECOMMENDATION

It is recommended that the Board approve the proposed First Amendment to extend the term of the existing License and Concession Agreement with Brotzeit-Lokal, LLC through May 31, 2023, located at 1000 Embarcadero Road at a monthly rent of \$4,753 per month, subject to 3% annual increases, and 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 & 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 of 1000 Embarcadero