

## AGENDA REPORT

**Ordinance:** Approve and Authorize the Executive Director to Execute a Fifth Amendment to the Lease with Yoshi's Japanese Restaurant, Inc. for Property Located at 510 Embarcadero West, Oakland, to Amend Various Rental Compensation Terms. (CRE)

<b><u>MEETING DATE:</u></b>	02/08/2018
<b><u>AMOUNT:</u></b>	\$10,000 (FY 17-18) Revenue
<b><u>PARTIES INVOLVED:</u></b>	Yoshi's Japanese Restaurant, Inc. Kazuo Kajimura, President
<b><u>SUBMITTED BY:</u></b>	Pamela Kershaw, Director of Commercial Real Estate
<b><u>APPROVED BY:</u></b>	J. Christopher Lytle, Executive Director
<b><u>ACTION TYPE:</u></b>	Ordinance

### **EXECUTIVE SUMMARY**

The subject Agenda Report is a request to approve and authorize the Executive Director to execute a Fifth Amendment to the existing Lease with Yoshi's Japanese Restaurant, Inc. ("Yoshi's") to amend the terms of their existing Lease for approximately 17,277 square feet of restaurant and entertainment space located at 510 Embarcadero West. The Lease amendment will modify the rental rate terms, provide for a one-time administrative fee, and allow the Port to avoid a potential vacancy and ensure a continuous rental revenue stream through May 2027 from the premises, while retaining a key entertainment venue within Jack London Square.

### **BACKGROUND**

In 1997, the Port entered into a ten-year Lease with Yoshi's to establish a Japanese restaurant and jazz club at 510 Embarcadero West, on the ground floor of the Washington Street Garage. At the end of the original Lease term in 2007, the Port extended the Lease with Yoshi's for another ten-year term that expired on May 18, 2017. On May 4, 2017, the Port approved a fourth amendment to the Yoshi's Lease to extend the term for an additional ten years and modify the compensation terms. Shortly after the execution of the recent amendment Yoshi's approached the Port and requested another amendment to the lease to adjust the rental compensation terms that were recently approved in May of 2017.

## **ANALYSIS**

After exchanging a number of proposals during the negotiations of the lease terms in early 2017, the Port provided Yoshi's with the opportunity to select from two options. Option 1 provided Yoshi's with a lower base rent and 8% rate for the calculation of the percentage rent, but it would require Yoshi's to reimburse the Port for common area expenses. Option 2 provided Yoshi's with a higher base rent by aggregating the base rent and common area expense reimbursement and a 9% percentage rent rate for the calculation of percentage rent. Yoshi's selected Option 1 offered by the Port, and the Lease was amended accordingly in May of 2017. After the execution of the most recent amendment, Yoshi's indicated that they had made a mistake in their selection of options and requested that the Port amend the Lease again to reflect the terms originally offered under Option 2. The following table summarizes the proposed key business terms of the existing Lease and the requested amendment to reflect the original Option 2:

	<b>CURRENT TERMS (OPTION 1)</b>	<b>PROPOSED TERMS (OPTION 2)</b>
Term Commencement	May 19, 2017	March 1, 2018
Term Expiration	May 1, 2027	May 1, 2027
Security Deposit	\$110,442	\$110,442
Base Rent	\$36,814	\$46,937
	3% annual increases	3% annual increases
Common Area Reimbursement	\$10,123	\$0
	3% annual increases	N/A
Percentage Rent	8% of gross sales over Base Rent only (excludes Common Area Reimbursement)	9% of gross sales over Base Rent
One Time Tenant Improvement Credit	\$80,000	\$80,000
Administrative Fee	\$0	\$10,000

The aggregate guaranteed rental payments to the Port, base rent and common area reimbursement, are the same under both options, however the percentage rent paid to the Port could potentially be lower under Option 2. It is difficult to quantify the impact on the percentage rent at this time because it is contingent on future restaurant gross sales totals. Based on the gross sales generated during the 2017 calendar year the percentage rent due to

the Port would have been about \$4,400 lower under Option 2. In consideration for amending the Lease again to switch to the original Option 2, Yoshi's has agreed to pay a one-time administrative fee in the amount of \$10,000 to the Port.

Yoshi's is an internationally recognized venue in the jazz entertainment world and one of the premier locations in the Bay Area for Japanese cuisine and jazz music. Yoshi's offers a 310-seat live performance venue with outstanding sound system and design. In recent years Yoshi's has expanded its focus to include broader genres suitable to a variety of musical tastes. As a strategic anchor tenant for Jack London Square, Yoshi's enhances the vitality and marketing of the Square as a destination dining and entertainment location. The proposed business terms for Yoshi's Lease amendment are competitive with rental rates charged to other existing restaurants in Jack London Square considering Yoshi's location, space design, and the positive impact that Yoshi's large customer draws have on parking revenue collected in the Port owned parking garage adjacent to the venue. Furthermore, the proposed fifth amendment to the Lease will enable Yoshi's to continue their operations at a more comfortable margin at this location, while ensuring retention of a key tenant for the Port and absorbing Port administrative costs for the preparation and processing of the amendment. Based on the analysis above, staff recommends approval of the proposed amendment to the Lease.

### **BUDGET & STAFFING**

The proposed lease amendment will have no impact in guaranteed rents on the adopted revenue budget for FY 2017-18. The total revenue projected over the remaining ten year term of the agreement is about \$5,816,000. Based on 2017 gross sales volume, with a 3% annual increase, the variable rent is projected to be lower by about \$39,000 over the term of the agreement under the proposed lease terms compared to the current lease terms. However, the one-time administrative fee in the amount of \$10,000 will generate a positive revenue variance for FY 17-18.

The proposed action will have no impact on staffing as the existing property is currently managed by CRE Division staff.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained within this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

### **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan:

Goal B: Maintain and Aggressively Grow Core Businesses

- 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 Lease amendment has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15300.4, which exempts the execution of leases or agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. Approval of the proposed Lease amendment with Yoshi's falls within this class of exemptions. No additional environmental review is required to take the action recommended in this Agenda Report.

## **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. This site is under City of Oakland zoning jurisdiction, but a City determination is only necessary when alterations are proposed.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

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**

1. Approve and authorize the Executive Director to execute the proposed fifth amendment to the Lease with Yoshi's for the premises located at 510 Embarcadero West to amend the compensation terms based on the terms and conditions stated within this Agenda Report. This is the recommended option.
2. Approve and authorize the Executive Director to execute the proposed fifth amendment to the Lease with Yoshi's for the premises located at 510 Embarcadero West, but subject to alternative terms and conditions, which depending on the nature of those alternative terms and conditions, may not be acceptable to Yoshi's.

3. Do not approve the proposed fifth amendment to the Lease with Yoshi's for the premises located at 510 Embarcadero West, which could result in a vacancy of the premises if Yoshi's is unable to continue operations based on the existing Lease compensation terms.

### **RECOMMENDATION**

Staff recommends that the Board approve and authorize the Executive Director to execute a fifth amendment to the Lease with Yoshi's for property located at 510 Embarcadero West, to amend various rental compensation terms, subject to the terms and conditions stated within this Agenda Report, and subject to the approval as to form and legality by the Port Attorney. Furthermore, if this Lease Amendment 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 or his designee.

Attachments: Exhibit A - Site Map for Premises

**EXHIBIT A – SITE MAP**  
**510 Embarcadero West**  
**Oakland, California**

