

AGENDA REPORT

Ordinance: Approve and Authorize the Execution of a Lease with the East Bay Regional Parks District for a Term of 33 Years for an Initial Monthly Rental Amount of \$2,300 for Property Located at 1441-1551 Embarcadero Road, Oakland. **(CRE)**

MEETING DATE: 4/12/2018

AMOUNT: \$2,300.00 (Monthly Rent)
Revenue

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

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This matter is a request for approval of a long term Lease with the East Bay Regional Parks District ("EBRPD") for a 1.44 acre site located at 1441-1551 Embarcadero Road, for development of a passive-use waterfront pocket park and waterfront trail staging site. The site is a small rectangular property with two sides adjoining the Oakland Estuary, and has been vacant for over ten years. The City of Oakland has a Temporary Right of Entry to construct a segment of the waterfront trail/Bay Trail on the site adjacent to the shoreline. The proposed use of the property by EBRPD for a trail staging site will complement the planned trail development previously authorized for the site.

BACKGROUND

The Port owns a property of approximately 1.44 acres in size located at 1441-1551 Embarcadero Road that has been vacant for the past 10+ years. The property is a small rectangular lot adjacent to the Oakland Estuary on both the southern and eastern sides with frontage 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. A site plan 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 an Exclusive Negotiating Agreement ("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. In June of 2017 the Board of Port Commissioners authorized approval of an ENA for the

site, including proposed key business terms of a potential Lease. The ENA is currently in effect and will expire on June 1, 2018 unless a Lease is approved by both the EBRPD and the Port. The EBRPD Board authorized approval and execution of a Lease with the Port for the property on March 20, 2018.

ANALYSIS

For the past several months Port staff and EBRPD staff have been negotiating the terms and specific language of a potential Lease for the site, consistent with the proposed business terms contained within the ENA Exhibit B approved by the Board in 2017. A brief summary of those key business terms is included below:

<u>Premises:</u>	1.44 acres located at 1441-1551 Embarcadero Road (former Crowley site).
<u>Parties:</u>	The Port and EBRPD.
<u>Term:</u>	33 years, with two (2) options to extend for sixteen (16) years each, subject to certain notice requirements and mutual agreement among both parties to extend.
<u>Rent:</u>	\$2,300 per month, subject to annual CPI increases with a maximum increase of 4% and a minimum increase of 2%, the first three months of rent to be deducted from the ENA deposit of \$13,800 previously provided to the Port.
<u>Security Deposit:</u>	\$9,200 (equivalent to four times the monthly rental amount).
<u>Use of Premises:</u>	Development and operation of a passive recreational space and trail staging site.
<u>Improvements:</u>	All improvements to the premises to be constructed by EBRPD at EBRPD sole cost and expense, no Port improvement obligations.
<u>Maintenance:</u>	All maintenance of the premises to be performed by EBRPD at the sole cost and expense of EBRPD, major maintenance and repair required to address failure or potential failure of the seawall shall be at EBRPD sole discretion to address, if the property suffers severe damage due to events of nature related to the seawall rendering the property unusable for EBRPD purposes then EBRPD may terminate the Lease.
<u>Utilities:</u>	Installation and maintenance of utilities, and the payment of utility service charges, to be performed and paid for by EBRPD.

Environmental: Environmental remediation or testing required for EBRPD development or use of the site is at EBRPD sole cost and expense, EBRPD not liable for damages to third parties or properties caused by pre-existing site conditions prior to the effective date of the Lease, unless the damages are caused by EBRPD failure to comply with provisions of the Lease.

Assignment: No assignment of the Lease permitted without prior written consent of the Port.

The proposed business terms of the Lease listed above are consistent with those included as draft business terms in Exhibit B to the ENA and have been further detailed within various specific sections of the Lease itself. The proposed Lease terms reflect a fair market rental value for the site based on the small size, unimproved condition, narrow shape, and location of the property adjacent to the Oakland Estuary on two sides. Approval of the proposed Lease will result in a long term revenue stream for the Port from a property which has been vacant for several years, eliminate future maintenance obligations for the Port, and result in the development of a passive recreational trail staging area to connect with and complement the City's plans to construct a waterfront trail segment on the site. Based on the terms, conditions, and analysis contained above, staff recommends approval of the proposed Lease with the EBRPD.

BUDGET & STAFFING

Approval of the proposed Lease will result in \$2,300 in additional revenues in FY 17/18 due to the timing of the effective date of the Lease which is June 1, 2018, but will result in \$27,600 in additional revenues for FY 18/19, which amount will be included in the revenue forecasts for the FY 18/19 operating budget. The proposed action does not have any staffing impact 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 Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenues
- Goal: Serve Our Community

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.

SUSTAINABILITY

The proposed Lease with the EBRPD will result in the development of a waterfront trail staging site on the property. Land use authority for development permits on this property are within the jurisdiction of the City of Oakland and the EBRPD will need to obtain any applicable zoning and building permits from the City of Oakland prior to commencing development of the site. The City of Oakland has adopted Green Buildings Guidelines which apply to certain building and zoning permits, a Creek Protection Ordinance which applies to development permits adjacent to creeks or waterways, a Construction and Demolition Recycling Ordinance, and a Bike Parking Ordinance, among other code requirements, that are intended to regulate the development of sites within Oakland and ensure sustainable design and site management practices are utilized. The proposed development of the site by EBRPD will be reviewed and evaluated by the City of Oakland Planning and/or Building Division as part of the development permit process, to ensure that all applicable codes and policies are applied to the specific site improvements. In general, it is anticipated that the development of a passive recreational site on the property will result in the creation of additional permeable surfaces to allow storm water to infiltrate into the underlying soils, and will enhance the environmental setting of the site by providing connectivity to the Oakland Estuary for visitors to the site.

ENVIRONMENTAL

CEQA Determination: The Port's discretionary action to enter into a lease with EBRPD for this property is categorically exempt pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3), which states that "a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Approving the lease with EBRPD will not adversely impact the environment, therefore this action is exempt from CEQA. On March 20, 2018, EBRPD determined the project to be exempt from the requirements of CEQA pursuant to Section 15325(f)(Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) and Section 15061(b)(3).

Environmental Compliance: EBRPD is responsible for complying with all federal, state, and local environmental regulations. As described above in the Analysis section, any environmental remediation required for EBRPD's development will be at the sole cost and responsibility of EBRPD.

GENERAL PLAN

The project appears to conform to the policies of the General Plan. The project is within City of Oakland planning jurisdiction, and they will make an official finding as part of any zoning or discretionary approvals.

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 and authorize the execution of a Lease with the East Bay Regional Parks District for property located at 1441-1551 Embarcadero Road, subject to the terms and conditions described within this Agenda Report. This is the recommended action.
- Do not approve or authorize the execution of a Lease with the East Bay Regional Parks District for property located at 1441-1551 Embarcadero Road, which will likely result in a continued vacancy at the site for some period of time.
- Approve and authorize the execution of a Lease with the East Bay Regional Parks District for property located at 1441-1551 Embarcadero Road, subject to terms and conditions different than those described within this Agenda Report, which depending on the nature of those changes, may not be acceptable to the East Bay Regional Parks District.

RECOMMENDATION

It is recommended that the Board adopt an Ordinance to approve and authorize the execution of a Lease with the East Bay Regional Parks District for a term of 33 years, for an initial monthly rental amount of \$2,300, 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.

Attachment: Exhibit A - Site Map