

## AGENDA REPORT

**Resolution:** Approve and Authorize the Executive Director to Execute an Exclusive Negotiating Agreement with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, for a Term of One Year for a Deposit Amount of \$100,000 for Property Located at 1 Market Street, Oakland **(CRE)**

**MEETING DATE:** 4/26/2018

**AMOUNT:** \$100,000 (One Time)  
Revenue

**PARTIES INVOLVED:** Athletics Investment Group LLC,  
dba the Oakland Athletics  
Dave Kaval, President

**SUBMITTED BY:** Pamela Kershaw, Director of Commercial Real Estate

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

This matter is a request for approval of an Exclusive Negotiating Agreement (“ENA”) with the Athletics Investment Group, LLC, dba the Oakland Athletics, a California Limited Liability Company (“Oakland A’s”) for property located at 1 Market Street, also known as the Howard Terminal site. The purpose of the ENA is to allow the Oakland A’s an opportunity to negotiate exclusively with the Port and conduct due diligence on the property to determine the suitability of the site for the development and operation of a world-class waterfront ballpark, and for beneficial and related ancillary uses. The ENA includes a one-time deposit to the Port, which is refundable in certain circumstances or partially credited toward potential future Option Agreement payments, and the term of the ENA is for one year.

### **BACKGROUND**

The Port owns an approximately 50 acre property located at 1 Market Street, which is commonly referred to as Howard Terminal, which was previously used as a maritime container terminal up until January 2014. The property is currently used by a variety of short term tenants for maritime support uses (e.g., truck parking, loaded and empty container storage/staging, longshore training facilities, etc.). An illustrative site plan of the Howard Terminal site is attached as Exhibit A to this report for reference.

Use and development of this site for maritime and non-maritime related activities, including for the development and operation of a baseball stadium project, has been discussed in the recent past since the former marine terminal operator relocated its operations to another marine terminal in 2013-2014. A summary timeline of some key events that have occurred affecting the site during the past 4-5 years is provided below:

- **July 2013:** The Port approves early termination of the container terminal lease with SSA Terminals, LLC (SSAT) for Howard Terminal;
- **October 2013:** The Port issues a Request for Proposals to solicit maritime use proposals for Howard Terminal;
- **January 2014:** SSAT vacates the Howard Terminal site and relocates their operations to other property within the seaport, and Port staff begin executing short-term tenancy agreements for maritime support uses on the site while concurrently marketing the property for longer term maritime uses (both containerized and non-containerized);
- **February 2014:** The Port receives three maritime use proposals for Howard Terminal in response to the Howard Terminal RFP and rejects all proposals for various reasons;
- **March 2014:** The Port approves and authorizes execution of an ENA with Oakland Waterfront Ballpark, LLC to negotiate terms of a potential baseball stadium development on the site;
- **November 2014:** Oakland Waterfront Ballpark, LLC requests early termination of the ENA with the Port;
- **July 2016:** Oakland A's announce that they are investigating 3 sites for a potential new baseball stadium development in Oakland (Laney College site, Howard Terminal site, Coliseum site);
- **September 2017:** Oakland A's announce that the Laney College site is their preferred location for development of a new baseball stadium;
- **December 2017:** Peralta Community College District Board directs their staff to cease discussions with the Oakland A's regarding a baseball stadium development at the Laney College site;
- **January 2018:** Oakland A's announce that they are revisiting their prior due diligence efforts on all three original preferred baseball stadium sites in Oakland (Laney College, Howard Terminal, Coliseum).

## **ANALYSIS**

Since restarting their due diligence efforts to select a site to develop a new baseball stadium in January – March of 2018, Port staff and the Oakland A's have met on several occasions to discuss Howard Terminal and provide various technical studies related to the property, construction plans for the site, and describe the site-specific land use and property encumbrances applicable to the site. The Oakland A's have expressed a desire to enter into an ENA with the Port for the property in order to allow them time to determine the suitability of the site for potential development of a baseball stadium and negotiate the potential terms of an Option Agreement for the property with the Port. The ENA would enable the Oakland A's time to conduct further due diligence of the existing site conditions, prepare conceptual site plans for the property, develop preliminary schedules for construction of improvements, meet with key regulatory agencies and community stakeholders, and refine construction and operational costs for the site, among other matters.

A summary of some of the key terms of a proposed ENA that have been discussed between the Oakland A's and Port staff are provided below, and are based largely on the previous ENA approved for the property with Oakland Waterfront Ballpark LLC in March of 2014. A draft of the ENA is also attached to this report as Exhibit B for reference.

<b>Parties to ENA</b>	Port of Oakland and Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company
<b>Premises</b>	Approximately 50 acre site located at 1 Market Street, also known as Howard Terminal
<b>ENA Deposit</b>	\$100,000, which is refundable (less certain third party costs for the Port) if the ENA is terminated prior to the term end; if an Option Agreement is executed prior to the end of the ENA term then the remaining deposit amount will be applied to future Option Agreement payments; if the ENA terminates and no Option Agreement is executed prior to termination, then the Port retains the deposit
<b>Term of ENA</b>	One year from Port Board authorization of the ENA or execution of Option Agreement by both Parties, whichever occurs first
<b>Interim Leasing and Possession of Premises</b>	Port retains possession of the premises and the right to continue leasing the premises to tenants during the ENA term for property rental agreements with a maximum term length of 30 months from the Effective Date of the ENA

<b>Port Third Party Costs</b>	Port may use up to \$50,000 of the deposit for certain third party costs incurred by the Port during the term of the ENA
<b>Assignment of ENA</b>	Any assignment of the ENA requires Port consent

As stated previously in the prior Port agenda reports in 2013-2014, due to the existing site constraints of the property, utilization of the site for import/export container terminal operations has proven difficult to secure since the departure of SSAT. The relatively small size of the property compared to present-day container terminals and the relatively shallow berth depth render the site challenging for modern container terminal operations (for import/export of international cargoes), as container vessels continue to increase in size. The site is also constrained by rail lines and the Embarcadero Roadway to the north, the existing commercial mixed use development of Jack London Square to the east, and privately owned property occupied by Schnitzer Steel to the west, all of which potential limit an expansion of the property for container terminal operations.

Thus, based on the terms and conditions of the proposed ENA stated above and the analysis contained herein, staff believes that the request to enter into an ENA with the Oakland A's is appropriate and recommends approval of this matter. It is important to note that execution of an ENA is in no way intended to bind or commit either party to a definitive course of future action, and any proposal to authorize execution of a potential future Option Agreement for the property would require subsequent consideration by the Board of Port Commissioners at a future public meeting if such negotiations are successful during the term of the ENA.

### **BUDGET & STAFFING**

The proposed ENA includes a one-time deposit to the Port in the amount of \$100,000, which is refundable under certain circumstances, and a portion may also be utilized by the Port for reimbursement of certain third party costs if needed. As such, the Port does not anticipate any additional revenues for the Port during FY 17-18. In the event no agreement is reached by the end of the ENA term in early 2019, and the ENA is not terminated by either party prior to the end of the ENA term, the Port retains the deposit. During the term of the ENA the Port will continue to receive all revenues from existing Port tenants located on the site.

There is no staffing impact from the proposed action.

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

The matters included in 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 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 because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

## **SUSTAINABILITY**

While the approval of the proposed ENA itself does not provide opportunities for incorporation of sustainable practices, it is anticipated that sustainable environmental design practices and policies will be discussed during the negotiations related to any future proposal for the development and operation of the site during the term of the ENA.

## **ENVIRONMENTAL**

### **CEQA Determination**

The proposed approval of the ENA has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15061(b)(3), which refers to the "general rule" that 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. As the approval of an ENA simply commits the Port and the Oakland A's to a limited period of exclusive negotiations regarding the property, and does not bind or commit either party to a future course of action nor include the approval of any project for the site nor any change in land use pattern for the site, approval of the ENA is not subject to CEQA.

## **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.

## **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 an Exclusive Negotiating Agreement with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, subject to the terms and conditions described within this agenda report. This is the recommended action.
- Do not approve or authorize the execution of an Exclusive Negotiating Agreement with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company.
- Approve and authorize the execution of an Exclusive Negotiating Agreement with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, subject to the terms and conditions different than those described within this agenda report, which depending on the nature of those changes to terms and conditions, may not be acceptable to the Oakland Athletics.

## **RECOMMENDATION**

It is recommended that the Board adopt a resolution to approve and authorize the Executive Director to execute an Exclusive Negotiating Agreement with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, for a term of one year for a deposit amount of \$100,000 for property located at 1 Market Street, as further described in this agenda report and subject to approval as to form and legality by the Port Attorney.

Attachments: Exhibit A – Illustrative Site Map of Property

Exhibit B – Draft ENA