

PORT ORDINANCE NO. 4472

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A THIRTY-THREE YEAR TERM (WITH TWO OPTIONS TO EXTEND) GROUND LEASE WITH THE EAST BAY REGIONAL PARK DISTRICT FOR AN INITIAL MONTHLY RENT OF \$2,300 FOR APPROXIMATELY 1.44 ACRES OF UNIMPROVED LANDS AT 1441-1551 EMBARCADERO ROAD, OAKLAND, CALIFORNIA.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.9, dated April 12, 2018 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board hereby finds and determines as follows:

A. The Port of Oakland (the "Port") entered into that certain Exclusive Negotiating Agreement ("ENA") dated for reference purposes only as of July 1, 2017 with the East Bay Regional Park District, a California special district (the "District");

B. The ENA set forth the key business terms of a potential lease for the development of a passive recreational park;

C. Port staff and District staff have reached agreement on the final form of a long-term ground lease on terms and conditions consistent with the key business terms attached to the ENA; and

D. The key terms and conditions of the lease are as follows:

- i. Premises: Approximately 1.44 acres located at 1441-1551 Embarcadero Road (the former Crowley Yard I site);
- ii. Term: 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;

- iii. Monthly Rent: \$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 deposited with the Port;
- iv. Security Deposit: \$9,200 (equivalent to four times the monthly rental amount);
- v. Use of Premises: Development, operation, maintenance and repair of a passive recreational space and trail staging site, together with all improvements related thereto;
- vi. Improvements: All improvements to the premises to be constructed by the District at District's sole cost and expense. The Port has no obligation to construct or otherwise provide any improvements;
- vii. Maintenance: All maintenance of the premises to be performed by the District at the sole cost and expense of the District. Any major maintenance and repair required to address the failure or potential failure of the seawall shall be at the District's sole discretion to address. If the premises suffer severe damage due to events of nature related to the seawall rendering the premises unusable for the District's purposes, the District may terminate the lease;
- viii. Utilities: Installation and maintenance of utilities, and the payment of utility service charges, to be performed and paid for by the District;
- ix. Condition of Premises/Environmental: The District has agreed to take the premises in its as-is, where-is, with all faults condition, without any representations or warranties from the Port, subject to the following: Environmental remediation or testing required for the District's development or use of the site is at the District's sole cost and expense. The District will not be liable for damages to third parties or properties caused by pre-existing site conditions prior to the effective date of the lease (June 1, 2018) unless the damages are caused by the District's failure to comply with provisions of the lease; and

- x. Assignment: No assignment of the lease will be permitted without the prior written consent of the Port.

E. The Board further finds and determines based upon all the information received by the Port to date that the proposed lease (i) reflects a fair market rental value for the site given the small size, unimproved condition, narrow shape, and location of the property adjacent to the Oakland Estuary on two sides, (ii) will result in a long-term revenue stream for the Port from a property which has been vacant for several years, (iii) will eliminate future maintenance obligations for the Port, and (iv) will result in the development of a passive recreational public park with a trail staging area that connects with and complements the City of Oakland's plans to construct a waterfront trail segment on the site, all of which is consistent with the Port's duties under the tidelands trust.

F. The Board further finds and determines based upon all the information received by the Port to date that the proposed lease is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), which states 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 the District will not adversely impact the environment. Therefore, this action is exempt from CEQA. On March 20, 2018, the District 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). The District is responsible for complying with all federal, state, and local environmental regulations. As described above, any environmental remediation required for the District's development will be at the sole cost and responsibility of the District.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed lease with the District and to make minor amendments to the lease consistent with the intent of this ordinance and the Agenda Report, subject to approval as to form and legality by the Port Attorney.

Section 4. This ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed as approved as to form

and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, April 12, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Hamlin, Martinez, Yee and President Story - 6. Excused: Commissioner Butner - 1. Noes: 0.

Daria Edgerly
Secretary of the Board