

## AGENDA REPORT

**Ordinance:** Approve and Authorize the Executive Director to Execute a Third Supplemental to Lease with AMFM Broadcasting, Inc. for Premises Located on the Northerly Side of the Bay Bridge for a Monthly Rental Amount of \$13,414.65. **(CRE)**

<b><u>MEETING DATE:</u></b>	10/11/2018
<b><u>AMOUNT:</u></b>	Approximately \$2.1 million over the Lease term Revenue
<b><u>PARTIES INVOLVED:</u></b>	AMFM Broadcasting, Inc. Stephen G. Davis, Senior Vice 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 for Board approval to amend an existing Lease with AMFM Broadcasting, Inc. to extend their Lease term for ten (10) years and two (2) months for premises located on the northerly side of the Bay Bridge. The proposed action will enable AMFM Broadcasting, Inc. to continue their radio services and ensure a continued stream of revenue for the Port from these premises.

### **BACKGROUND**

The Port has an existing Lease for a radio transmission tower with AMFM Broadcasting, Inc., a Delaware corporation ("AMFM Broadcasting") in the North Harbor Area (also referred to as Radio Beach area) for approximately 3.7 acres of water and land, near the Bay Bridge. The lease commenced on June 23, 1998 and expires on October 31, 2018. AMFM Broadcasting is requesting approval of a Lease term extension for ten (10) years and two (2) months, extending the current term through December 31, 2028.

### **ANALYSIS**

Staff has been discussing potential terms of a long-term Lease extension with AMFM Broadcasting, Inc for a few months. The following table summarizes the key business terms proposed, in addition to the other more standard terms and conditions of the Port's form Agreement:

Term Commencement	November 1, 2018
Term Expiration	December 31, 2028
Security Deposit	\$40,243.95 (3x the Monthly Rent)
Rent	\$13,414.65 per month for the first two (2) months of the term, consistent with the current rent amount. Effective January 1, 2019 the monthly rate will increase to \$14,420.00
Rent Adjustments	Four percent (4.0%) annual adjustment on January 1 of each year starting with January 1, 2020.  On January 1, 2024, Fair Market Value Adjustment based on an appraisal of the premises.
Administrative Fee	Nonrefundable administrative fee of \$5,000 for requests for approval of a future assignment or transfer of Lease.

The Port engaged an appraiser specializing in cell and radio towers to assess the market rates for its radio tower properties. The appraiser surveyed numerous public and private property owners throughout San Francisco Bay Area and concluded that while there is a wide range of charges for radio towers, the rents charged by the Port of San Francisco and City of Oakland are most representative for Port properties. The proposed rent with AMFM Broadcasting is consistent with the market rents determined by the appraiser for the subject site.

On March 14, 2018, iHeartMedia, Inc., and certain of its affiliates, including the current lessee AMFM Broadcasting, filed for relief under chapter 11 of the United States Code in the Bankruptcy Court for the Southern District of Texas. Under the terms of the proposed agreement, the Lease extension may terminate if AMFM Broadcasting fails to assume the current Lease by October 10, 2018 or fails to comply with the actions necessary to assume the current Lease. AMFM Broadcasting has been meeting its monthly rental obligations since it filed from bankruptcy. The rent due for March 2018 in the amount of \$13,414.65, however, is still outstanding and will be required to be paid as a condition of the lessee assuming the Lease.

Based on the analysis contained within this agenda report and the referenced site appraisal, staff believes that the proposed amendment to the existing Lease will provide a continuous income stream until 2028 at a rental rate consistent with the fair market value for the premises and recommends approval of this Third Supplemental to Lease.

## **BUDGET & STAFFING**

The proposed Third Supplemental to Lease will result in a positive variance of approximately \$5,800 compared to the adopted CRE Revenue Budget for FY 18/19.

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

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

The matters contained 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 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**

Port staff has reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.

## **ENVIRONMENTAL**

CEQA Determination: The action to amend an existing Lease with AMFM Broadcasting, Inc. to extend their Lease term to continue their radio services has been determined to be categorically exempt from requirements of the California Environmental Quality Act (CEQA) Guidelines pursuant to 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. No changes to the premises or use are proposed.

## **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)**

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 the proposed Third Supplemental to Lease with AMFM Broadcasting, Inc. for the premises located in the North Harbor Area, near the Bay Bridge, for a ten (10) year and two (2) month term based on the terms and conditions stated within this Agenda Report. This is the recommended option.
2. Approve the proposed Third Supplemental to Lease with AMFM Broadcasting, Inc. for the premises located in the North Harbor Area, near the Bay Bridge, but subject to alternative terms and conditions, which depending on the nature of those alternative terms and conditions, may not be acceptable to AMFM Broadcasting, Inc.
3. Do not approve the proposed Third Supplemental to Lease with AMFM Broadcasting, Inc, which will likely result in a vacancy of the premises and loss of revenue.

## **RECOMMENDATION**

Staff recommends that the Board approve and authorize the Executive Director to execute a Third Supplemental to Lease with AMFM Broadcasting, Inc. for the premises located in the North Harbor Area, 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 Third Supplemental to Lease is not fully executed within ninety (90) 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

