

AGENDA REPORT

Resolution: Authorize the Executive Director to Execute an Exclusive Negotiating Agreement with Eagle Rock Aggregates, Inc., for the Development and Lease of a Bulk Sand and Aggregate Marine Terminal at Berths 20-22, With a Non-Refundable Fee Up to \$500,000 (**Maritime**)

MEETING DATE: 5/9/2019

AMOUNT: Up to \$500,000 Non-Refundable Fee Revenue
\$75,000 Operating Expense

PARTIES INVOLVED: Eagle Rock Aggregates, Inc., Vancouver, BC Canada
Scott Dryden, President & CEO

SUBMITTED BY: John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Port of Oakland (Port) Maritime Staff have been actively involved in discussions with Eagle Rock Aggregates, Inc. (ERA) regarding the potential development of a bulk sand and aggregate marine terminal at the Berths 20-22 portion of the Port's Outer Harbor Terminal (OHT). The Port and ERA have advanced these discussions to the point in which the parties seek to enter into a one-year Exclusive Negotiating Agreement (ENA) to allow both parties to conduct due diligence and conclude negotiations for a long-term lease.

BACKGROUND

ERA is a subsidiary of Polaris Materials Corporation, which is a wholly owned subsidiary of U.S. Concrete, Inc. ERA currently imports sand and aggregates for the local San Francisco Bay Area construction industry from British Columbia, Canada, to their 5-acre marine terminal at the Port of Richmond, California. ERA's materials are also procured and imported in bulk by its competitors through various other bulk marine terminals throughout the Bay Area. These materials are primarily used in ready-mix concrete plants for construction projects in the San Francisco Bay region, including the City of Oakland.

ERA approached the Port in early 2018 indicating they were seeking to develop a new bulk sand and aggregate marine terminal to grow cargo throughput and be better positioned to serve the East Bay market, by minimizing the distance traveled by truck and the number of vessel moves within San Francisco Bay. ERA researched several locations and concluded that Oakland was the best location for its proposed marine terminal development. The OHT provides the required water depth, backland area, and market proximity. Staff's current land use plan indicates that the subject portion of the OHT will not be needed for container operations until about 2035, which allows business objectives of both the Port and ERA to be achieved over the next 15 years at the proposed OHT location.

The proposed marine terminal is envisioned to receive imported sand and aggregate material in bulk delivered by ocean-going vessels. Most of the cargo would then be trucked locally to ready-mix concrete plants and be used for local construction projects. ERA has indicated that some of the sand and aggregate imported to the proposed premises may also be distributed to other areas within San Francisco Bay by tug and barge.

ANALYSIS

Port staff has discussed the framework of a potential lease with ERA, and the parties are prepared to execute an ENA to allow the Port and ERA to conduct further due diligence on permitting, geotechnical work, and environmental analysis before concluding negotiations for a long-term lease for Berths 20-22 (see Exhibit A). The Port and ERA have conceptually agreed upon various key terms of a lease to be negotiated during the ENA term. The terms of the ENA include:

- Term of ENA: Approximately 11 months effective May 10, 2019, parties may extend the ENA up to three additional months if substantial agreement on material terms of the lease have been reached by March 31, 2020.
- Proposed Premises for Long-Term Lease: Berth 22 and approximately 20 acres of Berth 20, 21, and 22 backlands, to which the ENA would apply (Exhibit A). ERA's right to use the water area of Berth 22 will be preferential but non-exclusive. If Berth 22 is needed temporarily to load or unload a container vessel and ERA is not scheduled to use Berth 22, the Port will have the right to assign such container vessel to Berth 22 on a temporary basis.
- Proposed Use of Premises during Long-Term Lease: Import, export, storage, and distribution of sand and aggregates (i.e. different sizes of gravel) in bulk.
- Other Terms and Conditions to be Negotiated under Long-Term Lease: Other terms and conditions to be negotiated under the Long-Term Lease include a term of 15 years, rent based upon applicable Tariff 2-A rates, the condition of the premises, and other provisions commonly found in non-exclusive preferential assignment agreements or that either party considers material to their willingness to enter into the agreement.

- Termination of ENA: Either party may terminate with 30-days' written notice after month six of the ENA term.
- Access to Proposed Premises during ENA: The Port will grant to ERA rights to access the proposed premises during normal business hours to perform non-invasive and invasive (below ground) investigation as part of their due diligence. However, any invasive investigation will require the Port's prior written approval.
- Consideration for Exclusive Negotiating Rights for ENA: ERA will pay the Port a non-refundable, monthly fee of \$20,833.33 per month for each month the ENA is in effect up to a maximum of \$250,000. Further, if the parties reach substantial agreement on the terms of a lease prior to the expiration of the ENA, ERA shall pay the Port an additional one-time, non-refundable fee of \$250,000 as a condition precedent to the Port's duty to calendar the proposed lease for the Board's consideration. So, in aggregate, ERA's payment to the Port for the ENA could be up to \$500,000.
- Port's Right to Use Premises During ENA: Port retains the right to continue to use and lease the Premises on a month-to-month basis during the term of the ENA. Currently, the land is used for Ancillary Maritime Services, including for Truck Parking/Container Depot Facility purposes. Berth 22 is used as a "Flex Berth" as needed, to support container terminals or temporary vessel berthing.

Port staff recommends entering into an ENA with ERA for a proposed bulk sand and aggregate marine terminal at Berths 20, 21, and 22 of the Port's OHT.

BUDGET & STAFFING

ERA would be required to pay up to \$500,000 as a non-refundable fee as consideration for exclusive negotiating rights. If the ENA is approved by the Board on May 9, 2019, as proposed in this Report, ERA will pay the Port \$35,618 in FY2018-19, which was not budgeted. The balance will be included in FY2019-20 Budget, which is under development.

The negotiations will be conducted by existing Port Maritime Division staff; support will be provided by existing staff of other divisions. In addition, Staff expects to need some consulting services during the ENA term, to evaluate various conditions/proposals. These costs, currently estimated at about \$75,000, will also be included in the FY2019-20 currently under development.

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

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

ERA has not yet proposed any specific development for the proposed leased area. If the future prospective tenant decides to develop the site in the future, they must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

CEQA Determination: The proposed approval of an 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 ERA 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, approval of the ENA is not subject to CEQA.

GENERAL PLAN

The proposed action is limited to the negotiation of a property agreement and will not itself authorize any addition of new facilities. Any work required under the new agreement will be subject to further approval and will require a finding of conformity with the City of Oakland General Plan.

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

Staff has identified the following options for the Board's consideration:

1. Authorize the Executive Director to execute an ENA with ERA to negotiate the terms of a long-term lease to develop a bulk sand and aggregate marine terminal at Berths 20-22, as described herein.
2. Authorize the Executive Director to execute an ENA with ERA with modifications to the terms and conditions outlined herein, as may be directed by the Board.
3. Do not authorize the Executive Director to execute an ENA with ERA. Under this option, the Board could direct staff to continue negotiation non-exclusively (if ERA were willing to do so), stop negotiations and maintain current activities, or pursue an alternate development.

RECOMMENDATION

Staff recommends that the Board authorize the Executive Director to execute an Exclusive Negotiating Agreement with Eagle Rock Aggregates, Inc., for the development and lease of a bulk sand and aggregate marine terminal at Berths 20-22, with a non-refundable fee up to \$500,000, and expenditure of Port funds in the amount of approximately \$75,000 for consulting services, as further described herein.

Exhibit A

Proposed Location for Potential Sand/Aggregate Bulk Terminal (Berths 20-22)

SEAPORT FACILITIES

