

SUPPLEMENTAL AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Execute a Lease with Pacific Layberthing South, LLC, for Water and Land Area at Berth 9, for a Maximum Term of 10.5 Years, Resulting in Average Annual Revenue of Approximately \$521,288 **(Maritime)**

MEETING DATE: 12/17/2020

AMOUNT: Average Annual Revenue of Approx. \$521,288 per year (FY21- FY32)
Revenue

Approx. \$370,000 (net \$270,000) (FY22)
Operating Expense

PARTIES INVOLVED: Pacific Layberthing South, LLC
William Burgstiner, Partner

SUBMITTED BY: Bryan Brandes, Director of Maritime

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

Staff requests the Board's authorization to enter into a lease with Pacific Layberthing South, LLC, for water and land area at Berth 9 for a term up to 10.5 years for the purpose of laying up (i.e., extended berthing) two U.S. Department of Transportation Maritime Administration vessels.

BACKGROUND

The U.S. Department of Transportation Maritime Administration (MARAD) owns and operates several vessels that are placed into service on an as-needed basis to support the needs of the federal government. When these vessels are not actively in service, they are typically laid up in various ports throughout the U.S. where they are maintained in an operational status so they can be deployed upon short notice.

Since the late 1980s, Pacific Layberthing South, LLC (PLS) and its affiliates have been in the business of providing berthing space and services to lay up vessels for MARAD (and other entities) in port complexes throughout the U.S., including the Port of Oakland (Port). PLS recently approached the Port requesting one berth for a long-term basis for two MARAD

vessels, the Keystone State and the Gem State (further referred to herein as the “Vessels”). The Vessels would be nested (i.e., one moored to the dock and the other moored to the vessel). The Vessels will be in a “Reduced Operating Status” (ROS), which means they will sit idle until the needs of the federal government require the Vessels to be placed back into service.

ANALYSIS

Historically, the Port has used Berth 9 for a variety of revenue-generating maritime industrial purposes on both short-term and long-term bases. These uses have included, but not been limited to, vessel layberthing, truck parking, and container staging. Berth 9 has limited water depth and adjacent backlands, which naturally limit the types of maritime industrial uses. Berth 9 is a desirable location for the long-term layberthing of the Vessels because the Vessels are shallow draft and this location would not conflict with anticipated new maritime operations in the Outer Harbor. Highlights of the proposed lease terms include:

- **Premises.** Approximately 120,700 square feet of water area and 47,175 square feet of adjacent backlands.
- **Use of Premises.** Layberthing of the Vessels Keystone State and Gem State. PLS may, from time to time, swap out the Vessels with other MARAD vessels that are the same size or smaller. There shall never be more than two vessels in the Premises at any one time.
- **Term, Term Extensions, and Occupancy.** The Initial Term shall be effective when at least one of the Vessels arrives to the Premises. PLS must occupy the Premises between March 1, 2021 and February 28, 2022, or the lease will automatically terminate. The Initial Term is one year and PLS shall have up to ~~4~~ 11 one-year options to extend the term at PLS’ sole discretion followed by a single option to extend the term for five years and 6 months with such option requiring approval by both PLS and the Port’s Executive Director, such that PLS may have a maximum term of 10.5 years after occupancy.

PLS’ requirement to occupy the Premises may be extended through February 28, 2023 if the Port is unable to complete the initial dredging (see below) in 2021. Before it can occupy Berth 9, PLS must complete its improvements (see description of improvements below), demonstrate the Vessels can plug into shore power infrastructure, and notify the Port that dredging is required before Vessels can berth or notify the Port that Vessels can berth without prior dredging (though dredging will be required within the first two years of the Term).

- **Termination.** PLS retains the right, in its sole discretion, to terminate the lease with no less than 30 days advance written notice to the Port if the MARAD terminates its agreement with PLS. The Port does not have an early termination right.
- **Compensation and Monthly Rent Increases.** Fixed Monthly Rent will be \$1,400/day (\$511,000 annualized) during the Initial Term through Contract Year 5 if the Initial Term is extended. Fixed Monthly rent increases 2% each year starting in Contract Year 6,

except for the last six months of the maximum Term (if extended), in which rent is held flat from the prior year. Rent commences upon occupancy.

- **Performance Deposit.** Shall be equal to three (3) months' rent, or \$126,000, and increase commensurate with rent increases.
- **Port Relocation Right.** The Port has the right to permanently relocate PLS within the Seaport one time during the term, at the Port's sole cost.
- **Improvements, Maintenance, and Utilities.** PLS is responsible for the cost, installation, and maintenance of any improvements at Berth 9, including but not limited to, fencing, bollards, fenders, electrical, water, pavement, and sanitation infrastructure. PLS must remove its improvements at PLS' sole cost at the end of the lease term and return the area to the Port in accordance with the lease terms. PLS is also responsible to pay for all utility costs including shore power. The Port will issue PLS a temporary access right to make improvements to Berth 9 at PLS' sole cost. In the event the Board does not approve this lease, PLS must remove the improvements at PLS' sole cost.
- **Rent Credit.** Upon arrival at the Seaport, the Port may direct the Vessels to berth at an alternate berth. The Vessels would berth at this alternate location for no more than thirty (30) days under a month-to-month Space Assignment Agreement at Tariff No. 2A rates. The Port would provide PLS with a credit in the amount of \$2,179 for one vessel per day, or \$5,758 for two vessels per day, each day from the effective date of the Space Assignment and the date PLS occupies Berth 9. Based on the 30-day maximum duration, the total amount of the credit shall not exceed \$172,740. During this temporary pre-lease term, the Vessels will not plug into shore power and the Port will not be required to provide utility connections for the Vessels.
- **Dredging.** PLS has advised the Port it needs a berth depth of -29 feet mean lower low water. Port staff has agreed to perform the initial dredging of the berth at an estimated cost of \$370,000. PLS will reimburse the Port for this work but PLS will be granted a \$100,000 credit to use toward such reimbursement (i.e., net PLS expenditure is expected to be approximately \$270,000). If the Port cannot complete the initial dredging of the Premises by December 31, 2022, the Lease will terminate. PLS will be responsible to pay and perform any subsequent dredging during the Term at PLS' sole cost. If PLS wants the Port to perform such subsequent dredging, the parties will amend the lease to reflect the terms under which the Port would perform this work.

Based on recent analyses of marine terminal capacities and cargo growth projections, Port staff does not anticipate a conflict between the expansion of Seaport facilities and the lease described herein. In fact, placement of the Vessels at Berth 9 is to avoid conflict with plans for current uses and new developments in the Outer Harbor. As such, the proposed Lease would be an incremental and consistent revenue stream.

BUDGET & STAFFING

The proposed Lease with PLS will result in initial revenue of approximately \$1,400/day (\$42,000/month) and average annual revenue of \$521,288 over the maximum term. This new

revenue was included in the FY 2020-21 Maritime Division operating revenue budget, as part of a placeholder for anticipated but unknown tenancies. Revenue in FY 2021-22 and beyond would be incremental revenue.

The proposed action is not expected to have impact on Port staffing.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) applies to this tenant project to the extent the Port has issued a building permit for such 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: Modernize and Maintain Infrastructure

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 agreement as the tenant does not employ 21 or more employees working on Port-related work. However, the tenant will be required to certify that should living wage obligations become applicable, the tenant shall comply with the Living Wage Regulations.

SUSTAINABILITY

The Vessels will use shore power and not run diesel generators while at berth during the term of the proposed Lease to eliminate diesel emissions. Additionally, the proposed Lease incorporates the updated "Environmental Responsibilities" Exhibit, which requires PLS to adhere to any Seaport Air Quality 2020 and Beyond Plan requirements.

ENVIRONMENTAL

CEQA Determination: The proposed Lease with PLS is categorically exempt from the California Air Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, 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 existing or former use. The dredging activity associated with the proposed Lease to -29 feet mean lower low water is part of the Port's maintenance dredging program, which is exempt from CEQA pursuant to Section 15304(g), which exempts maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.

GENERAL PLAN

Pursuant to Section 727 of the City of Oakland Charter, this project has been determined to conform to the policies for the General Industry and Transportation designation of the 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

Port staff has identified the following three options for the Board's consideration:

1. Authorize the Executive Director to execute a lease with PLS, as described herein.
2. Authorize the Executive Director to execute a lease with PLS under different terms than those stated in this Agenda Report, as may be directed by the Board. Under this option, staff would have to advise PLS of any new terms, which PLS may or may not accept.
3. Do not authorize the Executive Director to execute a lease with PLS, and direct Port Staff to pursue alternative uses of the subject property. As noted herein, the location and size of Berth 9 are ideal for layberthing on a near-term basis; other uses may be limited or require significantly more improvements.

RECOMMENDATION

Port Staff recommends that the Board approve and authorize the Executive Director to execute a lease with Pacific Layberthing South, LLC, for water and Land Area at Berth 9, for a maximum term of 10.5 years, resulting in average annual revenue of approximately \$521,288.

Exhibit A

PLS – Berth 9 Location

SEAPORT FACILITIES

