

AGENDA REPORT

Ordinance: Approve and Authorize the Executive Director to Execute a Three-Year License & Concession Agreement with Mary Ann Swift, dba Afterguard Sailing Academy, for the Premises Located at 1285 Embarcadero Road, Oakland, at an Initial Annual Rent of \$60,852(CRE)

MEETING DATE: 4/8/2021

AMOUNT: \$60,852.00 Initial Annual Rent Revenue

PARTIES INVOLVED: Mary Ann Swift, dba Afterguard Sailing Academy
Oakland, CA

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This item requests approval of a three (3) year License and Concession Agreement with Mary Ann Swift, dba Afterguard Sailing Academy, for the premises located at 1285 Embarcadero Road in Oakland, California.

BACKGROUND

The existing Port-owned property at 1285 Embarcadero Road, Oakland consists of the following components: approximately 900 sq. ft. of office space, 4,586 sq. ft. of warehouse space, and approximately 6,891 sq. ft. of paved and fenced land ("Premises"). The Premises is currently leased by Transfer Case Express, Inc. under a License and Concession Agreement dated March 1, 2014, as amended by a First Amendment dated May 1, 2016, and a Second Amendment dated April 25, 2019. This agreement expires on April 30, 2021 and a portion of the Premises are currently sub-licensed to Afterguard Sailing Academy. The current lessee, Transfer Case Express, has indicated that they no longer wish to rent the Premises from the Port after the current Agreement expires due to them relocating their operations out of State. In December 2020, the principal of Afterguard Sailing Academy, Mary Ann Swift, dba Afterguard Sailing Academy ("Afterguard") approached the Port with a desire to lease the Premises under a new agreement directly from the Port for a three (3) year term upon expiration of the existing agreement with Transfer Case Express, Inc.

A site plan and map indicating the location of the premises is attached as Exhibit A to this report.

ANALYSIS

For the past two (2) years, Afterguard has utilized the Premises for maritime education for sailboat operation and safety, and related ancillary administrative purposes. In June 2020, Afterguard was given approval by Alameda County to remain open during the pandemic in order to provide for lessons and youth programs, as the warehouse space formerly occupied by Transfer Case Express, Inc. allows Afterguard to provide their students the needed space for social distancing indoors. Formed in 2003, Afterguard is an Oakland Unified School District provider of accredited youth education and plans to expand their current program to reach more schools and include an after-school 'build a boat' program.

Staff has been discussing the potential business terms of a new License and Concession Agreement with Afterguard for the past three (3) months. The proposed key terms of the License and Concession Agreement proposed for Board consideration are as follows:

- Parties: The Port and Mary Ann Swift, dba Afterguard Sailing Academy.
- Premises: Approximately 900 sq. ft. of office space, 4,586 sq. ft. of warehouse space, and approximately 6,891 sq. ft. of paved and fenced land located at 1285 Embarcadero Road, Oakland, as indicated in Exhibit A.
- Term: Commencing on May 1, 2021 and terminating on April 30, 2024.
- Rent: \$5,071 per month with 3% annual increases.
- Security Deposit: Three (3) times' the monthly rent.
- Maintenance and Improvements: No Port maintenance or improvement responsibilities. Afterguard is responsible for all maintenance and utilities within the Premises.
- Proposed Use: Maritime education for sailboat operation and safety, and related ancillary administrative purposes.
- Assignment Request Fee: Administrative processing fee of at least \$5,000 for future requests for assignments. This fee would not be required, however, for a request by Mary Ann Swift to assign the agreement to a California limited liability company that she owns and controls, provided that she remains liable as a principal under the assigned Agreement.

Staff believes that the continued occupancy of this space by Afterguard will help to deter theft and vandalism of the Premises, is an appropriate and beneficial use of this existing asset, and that the rental rate is consistent with the Port adopted Target Rental Rates. Furthermore, the agreement will enable the Port to receive revenue from this property without interruption by any period of potential vacancy once the current tenant, Transfer Case Express terminates, and will enable a local business to remain and expand their operation on the Premises. Based on the

analysis above, staff recommends approval of the proposed License and Concession Agreement, based upon the terms and conditions stated within this Agenda Report.

BUDGET & STAFFING

The proposed License and Concession Agreement will result in approximately \$396 of additional revenue for FY2021. The proposed action does not have any staffing impact.

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: Improve Customer Service

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

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

ENVIRONMENTAL

The action in this Agenda Report was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA). Section 15301 "Existing Facilities" of the CEQA Guidelines 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. Executing a License and Concession Agreement with Afterguard as described in this Agenda Report meets this criterion and is therefore exempt from the provisions of 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

- Adopt an ordinance approving the proposed License and Concession Agreement with Afterguard, subject to the terms and conditions described within this Agenda Report. This is the recommended option.
- Do not adopt an ordinance approving the proposed License and Concession Agreement with Afterguard, which will result in a vacancy within the CRE portfolio.
- Adopt an ordinance approving the proposed License and Concession Agreement with Afterguard, but subject to different terms and conditions than those contained within this Agenda Report, which depending on the nature of those terms and conditions, may require further negotiation with Afterguard.

RECOMMENDATION

It is recommended that the Board adopt an ordinance to approve the proposed License and Concession Agreement with Mary Ann Swift, dba Afterguard Sailing Academy, for the Premises located at 1285 Embarcadero Road, and authorize the Executive Director or his designee to approve and execute such agreements and such additional documents as may be necessary to consummate the transaction contemplated in this Agenda Report, subject to approval by the Port Attorney as to form and legality, and as further described in this Agenda Report. It is further recommended that the subject approval be valid for no longer than 60 days from the date of Board approval, and that if the subject License & Concession Agreement is not fully executed by that date such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or his designee.

Attachment: Exhibit A – Site Map of 1285 Embarcadero