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AGENDA

Commercial Real Estate Committee

Wednesday, June 2, 2004

12:00 Noon – Board Room

ROLL CALL

President John **Protopappas**, Chair
Vice President Patricia **Scates**
Commissioner Frank **Kiang**

1. Review of June 22, 2004 Board Calendar Items:

- a. Approval to Enter into an Agreement with the City of Alameda to Provide Ferry Services n the Amount of \$148,139.00
- b. Approval of a License and Concession Agreement with Crowley Maritime Services, Inc. for the use of 250 lineal feet of wharf space at the Ninth Avenue Terminal at an Annual Rental Rate of \$25,500

OPEN FORUM

Public comment on non-agenda items may be received by the Committee during this time. Please fill out a speaker card and present it to the Secretary of the Committee.

ITEMS REQUIRING CLOSED SESSION (90 minutes)

- 1. Conference With Legal Counsel – Anticipated Litigation**, Significant exposure to Litigation pursuant to subdivision (b) of California Government Code Section 54956.9: (4) matters

2. Conference With Real Property Negotiator:

Property: Various Parcels in Jack London Square, Oakland
Negotiating Parties: Port of Oakland and Ellis Partners
Under Negotiation: Price and Terms of Agreement

Property: Oak to Ninth Area, Oakland
Negotiating Parties: Port of Oakland and Oakland Harbor Partners, LLC
Under Negotiation: Price and Terms of Agreement

Property: 23-acres at Hegenberger Road & I-880 Freeway, Oakland
Negotiating Parties: Port of Oakland and Simeon Commercial Properties
Under Negotiation: Price and Terms of Agreement

Property: 2.09-acre parcel at the corner of Edgewater Dr. & Pardee Road, Oakland
Negotiating Parties: Port of Oakland and RMT Landscape Contractors, Inc.
Under Negotiation: Price and Terms of Agreement

ADJOURNMENT

The next regular meeting of the Commercial Real Estate Committee will be held on Wednesday, July 7, 2004 at noon in the Board Room.

AGENDA REPORT (DRAFT)

TITLE: Approval to Enter Into an Agreement with the City of Alameda to Provide Ferry Services in the Amount of \$148,139.00.

AMOUNT: \$148,139.00

PARTIES INVOLVED:

Corporate Name	Location
City of Alameda	Alameda, CA

TYPE OF ACTION: Resolution

SUBMITTED BY: Omar Benjamin, Director of Commercial Real Estate

COMMITTEE ASSIGNED: Commercial Real Estate

HEARD BY COMMITTEE: June 2, 2004

APPROVED BY: Tay Yoshitani, Executive Director

FACTUAL BACKGROUND

History:

As a result of the 1989 Loma Prieta earthquake, the Port of Oakland and the City of Alameda ("City") have combined efforts to provide ferry service, known as the "Alameda/Oakland Ferry Service" ("AOFS") serving Jack London Square, Alameda and San Francisco, under an agreement that was entered into between the two parties on March 20, 1990. This agreement has been amended from time to time (First Amendment, May 1, 1990; Second Amendment, May 18, 1993; and Third Amendment, March 15, 1994).

Under our Agreement with the City, Alameda was appointed lead agency for purposes of applying for grants, administering grant funding, contracting with ferry boat operators and other service providers to provide ferry services and administering such contracts. This Agreement also required major elements of the ferry operations to be subject to the Port's and the City's prior review and approval, including: a) evaluation and selection of, and proposed contract with, the ferry boat operator and other project service providers; b) RFP's; c) ferry rates and schedules; and d) marketing and promotion. The City is currently in the process of entering into a new contract with Blue & Gold Fleet to provide ferry services for the AOFS, for a one-year period commencing July 1, 2004.

AOFS Vessels:

With the assistance of local, state and federal funds, the Port and City have been able to jointly purchase 3 vessels used for the AOFS:

1. *“Bay Breeze”* - In 1992 the Port and the City received funds to construct the Bay Breeze, a 250-passenger catamaran. Eventually the Bay Breeze could not meet the increasing daily ridership demand.
2. *“MV Encinal”* – In 1997 the City and Port received state funds to purchase the Encinal, a 388-passenger vessel. In addition, the Port contributed \$100,000 toward the purchase price of this vessel.
3. *“Peralta”* - In 2000 the Board approved a \$4,750,000 grant from the State to build a new vessel named the “Peralta,” a 331-passenger vessel. The Port contributed \$350,000 toward this purchase price of this vessel.

AOFS Funding and Revenues:

The AOFS operational expenses are funded from various sources which are estimated and detailed in the table below:

Estimated Ferry Revenue and Funding for FY 04/05

Passenger Revenues Including Concession Bar	\$1,700,000.00
Subsidies	
▪ City of Alameda and Measure B Reauthorization	\$ 548,000.00
▪ Metropolitan Transportation Commission Funds (MTC)	\$ 837,183.00
▪ Port of Oakland	\$148,139.00
TOTAL	\$3,233,322.00

MTC has provided matching grants for ferry operations since 1990. The majority of MTC funding over the years has been derived from a small portion of bridge tolls known as the “5% Funds” and has been the major source of subsidy for the AOFS operations.

Measure B Reauthorization is a result of the \$.005 sales tax approved for Alameda County that provides for transportation enhancements within the County. A small portion of Measure B funds has been allocated for Alameda ferry services.

AOFS Operator:

The Blue & Gold Fleet has been AOFS’s ferry operator for the past ten years and is the largest private ferry operator on the West Coast. Blue & Gold Fleet also provides ferry services to/from San Francisco to Vallejo, Tiburon, and Sausalito. In addition to the previously mentioned ferry services, they provide Bay Tours, Angel Island and Alcatraz services. In November 2003 the City, with Port’s approval, dispensed with a new RFP to provide services for the AOFS and Blue & Gold Fleet was the sole bidder. This contract will commence July 1, 2004 and expire June 30, 2005.

ANALYSIS

At this time the Port and the City would like to enter into a new agreement which, among other things, will formally clarify the two parties' actions and intentions for the period during which the Agreement was not amended, resolve any outstanding issues, and set forth expectations and obligations between the two parties for future ferry services. Since the City has always assumed the role of lead agency and currently employs a full-time ferry manager and full-time program specialist, they have proposed to continue that role and to continue providing ferry services to the Oakland Ferry Terminal.

Proposed Agreement:

Port's Commercial Real Estate and Legal staff have negotiated the proposed major terms of a proposed ferry service agreement with City representatives, which are:

1. Term: The term shall be for one (1) year, terminating on July 1, 2005. The term may be extended if agreed to by both parties.
2. Termination: Neither party shall have the right to terminate this agreement during the term except for the following reasons: 1) an event of default by the other party, 2) termination as a result of the provisions related to unforeseen costs which materially exceed available funding for the AOFS or unforeseen declines in revenue, 3) if funding from MTC or other sources is no longer available and, 4) Force Majeure prevents continuation of the AOFS.
3. Services at Jack London Square: The City shall provide ferry services to Jack London Square in accordance with the ferry schedules attached to the agreement. The City shall also have the right to temporarily adjust the number and/or time of departures at no cost to the Port. The Port must approve any other changes that materially reduces, or materially adversely affect the level of services.
4. Port's Fee: The Port shall pay the City \$148,139.00 for the term of this agreement, payable in advance in equal quarterly installments during FY 04/05. Should the agreement be terminated during the term of this agreement by either party, the City will refund the Port a pro-rated portion of the last quarterly Port payment.
5. Assignment: After reasonable notice to and consent by the other party, the City or Port will have the right to assign their interests in this agreement.

BUDGET & FINANCIAL IMPACT

The proposed FY '04/'05 budget allocates \$148,139.00 for ferry services, which is the same amount budgeted in our current FY 03/04 budget.

STAFFING IMPACT

The proposed resolution will have no impact on staffing.

SUSTAINABILITY

The AOFS provides an alternative form of public transportation that helps to relieve traffic congestion on our regional roadways, which is beneficial to the Port of Oakland, City of Oakland and the region. Additionally, Blue & Gold Fleet, the ferry operator of the AOFS, is committed to the principles and practices of environmental best practices. Blue & Gold assisted the City and Port in obtaining a grant to repower the Encinal with significantly lower-emission engines and has performed the same on other vessels within its fleet.

ENVIRONMENTAL

The proposed resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State of California CEQA Guidelines which states: "...a project is exempt from CEQA if the activity is covered by 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." The approval of an agreement between the City of Alameda and the Port of Oakland to provide ferry services to Jack London Square will not adversely impact the environment.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

MAPLA does not apply to Commercial Real Estate projects.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

OCIP does not apply to the proposed action.

GENERAL PLAN

The proposed Agreement applies to a project which appears to conform to the policies of the General Plan. The project is within City of Oakland's planning jurisdiction and if necessary they would be responsible for making any official finding as part of the zoning approval.

LIVING WAGE

Neither the Port's Living Wage Ordinance (Port Ordinance No. 3666), nor living wage requirements set forth in Section 728 of the Charter of the City of Oakland apply at this time because Commercial Real Estate projects are exempt. Blue & Gold Fleet pays prevailing wages and employs union labor in the AOFS.

OPTIONS

- 1) To authorize Port staff to complete negotiations with the City of Alameda for the Ferry Service Agreement, which includes a payment of \$148,139.00 for a one (1) year term.
- 2) Do not authorize the actions stated above.

RECOMMENDATION

It is recommended that the Board authorize Port staff to complete negotiations and authorize the Executive Director or his designee to execute an agreement with the City of Alameda to provide ferry services to Jack London Square for a one (1) year term in the amount of \$148,139.00, provided that the agreement is approved as to form and legality by the Port Attorney.

AGENDA REPORT (DRAFT)

TITLE: Approval of a new License and Concession Agreement with Crowley Marine Services, Inc. for the use of 250 lineal feet of wharf space at the Ninth Avenue Terminal at an Annual Rental Rate of \$25,500

AMOUNT: \$25,500 annually

PARTIES INVOLVED:

Corporate Name	Location
Crowley Marine Services, Inc. A Delaware Corporation	Seattle, WA

TYPE OF ACTION: Resolution

SUBMITTED BY: Omar Benjamin, Director of Commercial Real Estate

COMMITTEE ASSIGNED: Commercial Real Estate

HEARD BY COMMITTEE: June 02, 2004

APPROVED BY: Tay Yoshitani, Executive Director

FACTUAL BACKGROUND

The following one-year License and Concession Agreement is submitted for Board approval.

Licensee	Location	Property Description / Use	Rate/Monthly Rent	Agreement Date
Crowley Marine Services, Inc.	Ninth Avenue Terminal	250 lineal feet of wharf space / Docking of two tub boats	\$8.50 per lineal foot / \$2,125 per month	June 15, 2004

Crowley Marine Services, Inc. (Crowley), is an operating division of Crowley Maritime Corporation, based in Seattle, Washington. Crowley owns and operates one of the most advanced fleets of ship assist and escort tugs in the world. They are re-launching their harbor towing and docking services for tankers, container ships and other vessels in the Oakland/San Francisco Bay Area after a seven-year absence. Previously, Crowley's tugs were a fixture in the bay from the early 1900's to 1996. Crowley Maritime Corporation has had its roots in San Francisco since it was founded there in 1892. Crowley Maritime's corporate headquarters is currently located in downtown Oakland.

Crowley sets high service standards through its solid environmental, safety, and quality assurance policies. They meet these standards by being the only ship assist and escort tugboats on the West Coast that are ISO 9001-2000 certified.

Crowley commenced docking two high horsepower tugboats, Sea Robin (120') & Tioga (85'), at the Ninth Avenue Terminal on May 1, 2004, under the terms of a limited duration Right of Entry & Indemnity Agreement. They occupy berth # 84, the area recently vacated by the Artship.

ANALYSIS

The proposed monthly rental rate (\$8.50 plf) is based on a recreational marina rate (high end), due to the fact that the current maritime tariff rate does not address the on-going monthly rental of wharf space. Maritime staff suggested that the recreational marina rate be used.

The proposed License and Concession Agreement contains a 30-day cancellation provision. Licensee will submit a security deposit in the amount of \$6,375.00. Crowley will be responsible for the payment of all utilities.

The Board in establishing License and Concession Agreement target rates for negotiations did not previously consider this Agreement.

BUDGET & FINANCIAL IMPACT

The proposed License and Concession Agreement will result in an increase in Port revenue. This increased revenue was not included in CRE's fiscal year revenue budget projections. This tenancy will not result in any additional Port expenses.

STAFFING IMPACT

There are no staffing impacts resulting from the proposed action.

SUSTAINABILITY

No sustainability opportunities have been identified.

ENVIRONMENTAL

The License and Concession Agreement has been determined to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and Port CEQA Guidelines Section 15301 (p) which exempts renewals, extensions or amendments to lease or license and concession agreements or the execution of leases or license and concession

agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

MAPLA does not apply to Commercial Real Estate projects.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

OCIP does not apply to the proposed action.

GENERAL PLAN

The project appears to conform to the policies of the General Plan. The project is within City of Oakland planning jurisdiction, and if necessary, they would be responsible for making any official finding as part of the zoning approval.

LIVING WAGE

The Living Wage requirements do not apply because the tenant is not a Port Aviation or Maritime tenant, thus not subject to Section 728 of the Charter (CRE tenancy agreements are not subject to Port Ordinance No. 3666.

OPTIONS

- 1) Approve the proposed License and Concession Agreement as recommended.
- 2) Approve the proposed License and Concession Agreement with conditions.
- 3) Do not approve the proposed License and Concession Agreement.

RECOMMENDATION

It is recommended that the Board approve the proposed License and Concession Agreement with Crowley Marine Services, Inc. as outlined above.