



## **STAFF REPORT**

**TO:** Property Committee

**FROM:** Andrea K. Lueker, Harbor Manager

**DATE:** September 12, 2019

**SUBJECT:** **Live Fish Storage Building Lease Site/Operating Agreement Request for Proposals**

### **Recommendation / Proposed Motion**

- Recommendation: Review and discuss the draft key terms for the issuance of a Request for Proposals (RFP) for the Live Fish Storage Building Lease site located on the Harford Pier.

### **Policy Implications**

Contracts Management Policy 3037 established policy for the development of contract agreements for private operations of District facilities.

District Ordinance Chapter 4, paragraph 4.030 authorizes the District to establish agreements with lessees for payment of the private use of District facilities.

### **District Major Objective/Goal**

Objective #2 – Expand money generating opportunities to support harbor operations that are consistent with lessees for payment of the private use of District facilities.

### **Fiscal Implications / Budget Status**

None at this time.

### **Alternatives Considered**

The following actions were considered but are not recommended at this time:

- None at this time.

### **Background**

The Property Committee has discussed the Live Fish Storage Building at several meetings in order to determine how best to proceed for the continued operation of the facility. At the August 2019 Property Committee meeting, the Property Committee members reviewed the history of the building's use and asked that District Staff come back to a subsequent Property Committee meeting with some suggested lease/operating

draft key terms to be included in an RFP for this piece of District Property. This movement toward an RFP is further substantiated by research recently conducted by District Staff and Legal Counsel (in regard to a separate piece of District Property), who researched the District's Policies as well as the Harbor and Navigation Code and found the following. Port San Luis Harbor District Policy No. 3037 – Contracts Management references the Harbors and Navigation Code (HNC) Section 72 as the baseline for legal requirements and addresses negotiating agreements without issuing an RFP.

1. HNC Section 72 states the following:

“Facilities may not be leased in whole or in part to a private concessionaire or lessee until the legislative body has published a notice...inviting bids and has otherwise complied with this section. And, at the time and place fixed in the notice, the legislative body shall meet and consider all bids that have been submitted. The lease shall be awarded to the highest responsible bidder...”

2. Port San Luis Harbor District Policy No 3037.5, item iv, section 1, Negotiated Agreement Without Issuing a Request for Proposals, states the following:

Under unusual circumstances (unusual circumstances are not defined and do not supersede the legal requirements) as determined by the Harbor Commission (see Harbors and Navigation Code Section 72 for legal requirements). Otherwise the following conditions must be met:

- a. Renewal of existing contract.
- b. Short term (5 years or less).
- c. Should provide for the same or higher rent return to the District for the current use.
- d. Renegotiation of current leases where the tenant is seeking a rent reduction may trigger a public bid process.
- e. Must be for existing uses.
- f. Any proposed change in use for a lease facility may trigger a public bid process.
- g. Only one such negotiation per lessee or that modifies or amends a specific, existing contract shall be allowed.

### **Discussion**

The Property Committee discussed issuing an RFP for either an operating agreement or a lease agreement for this District Facility. Generally, a lease agreement is for a longer term and is a more “in-depth” document as compared to an operating agreement. The definitions of each are as follows and District Staff recommends the Property Committee include their preference of agreement type (lease or operating) in their recommendation to the full Board of Commissioners.

**Lease** - Written contract by which the Port San Luis Harbor District (District) grants another party the right to its exclusive possession and use of a specific District asset for a specific period and under specified conditions, in return for specified periodic

rental or lease payments. A long-term written lease can create a leasehold interest which in itself can be assigned or mortgaged.

**Operating Agreement** - A limited term, revocable written agreement by an authority or proprietor to allow a second party to operate a business or facility under a specific set of terms. An Operating Agreement is not a right, as the operator may not have the legal power to give all necessary permissions that constitute a legal right. It is also not a lease and is not assignable by the operator.

Below are the draft key terms for possible inclusion in the RFP, which District Staff recommends the Committee consider and provide a recommendation to the full Board of Commissioners.

### **I. Goal of RFP**

The goal of the RFP is to receive proposals for the operation of a Fish Buying business located on the Harford Pier. The Fish Buying business will provide the following:

- landing, unloading, buying, selling (wholesale), storing, and transporting live seafood and fresh fish.

### **II. Site**

The location of the Fish Buying business is depicted in Attachment 1 and the area that is currently referred to as the Live Fish Storage facility.

The lease site will also include the following:

- A building of approximately 416 sq. ft.

### **III. Agreement Term**

Term of 5 years, with a maximum of one 5-year extension. An operating agreement would likely garner a shorter term.

### **IV. Minimum Rent Bid**

Minimum Annual Rent: \$10,000, with annual CPI increases

Wharfage: .01 cent per pound of produce crossing the dock

### **V. Timeline**

The following is the proposed timeline and is dependent upon whether the Board determines the agreement to be a lease or an operating agreement:

- Open: November 1, 2019
- Close: January 31, 2020
- Pre-proposal Meeting: Week of December 10, 2019 (final date to be determined)
- RFP Questions Deadline: December 23, 2019
- Answers to Questions Posted: December 31, 2019

**Conclusion**

Staff recommends the Property Committee review the draft key terms and type of agreement and forward a recommendation to the Board of Commissioners for consideration.

Attachment(s): 1. Lease Site Diagram