



Staff Report

TO: Board of Harbor Commissioners

FROM: Steve McGrath, General Manager

DATE: November 14, 2018

SUBJECT: Oyster Point Marina and Park: Potential New Agreement with South San Francisco

Recommendation/Motion:

This Commission has two options this evening:

- 1) Approve the Agreement:

Motion: Approve the draft agreement and exhibits with South San Francisco for operation of the Oyster Point Marina; authorize General Manager to execute and incorporate any non-material changes as may be requested by South San Francisco City Council.

- 2) Take no action and provide direction to staff.

Policy Implications:

None at this time, although the Joint Powers Agreement (JPA) with the City of South San Francisco (SSF) under which the District operates Oyster Point Marina and Park (OPM) will terminate in 2026, and, at this Commission's direction, discussions have continued regarding a new agreement.

Fiscal Implications/Budget Status:

In January 2018, this Commission received a final report from Dornbusch Associates. (Attachment 1) The firm was charged with performing a financial analysis to determine the implications of undertaking Capital Improvement Plan (CIP) investments, and the implications for both the JPA and any potential new agreement.

The report examined several scenarios, with various of levels of occupancy, berth rental rates and capital improvements. The report also reviewed a reduced occupancy

scenario, for example in a recession, and the potential for a management contract with the city. The report concluded with two basic recommendations:

Term of any new agreement:

Since the Harbor District would want to be able to benefit from the additional revenue and operating cash flows generated by the investment in new docks and other CIP projects, while fully amortizing its investments over their useful lives, under this scenario we would recommend that the JPA be extended approximately 30 years from the midpoint of the CIP. Since roughly half of the CIP investment occurs prior to FY2021 and half occurs after, we recommend that the CIP be extended to around the year 2050.

This recommendation is based on the assumption that the JPA termination clause is written the same way as the current JPA. (Page 39)

The draft agreement anticipates a 15-year term with two 10-year options, which, if executed in 2018, would extend the term to 2053.

Compensation for the District on termination:

We recommend that the JPA be amended so that, going forward, SMCHD is compensated for the residual value of any investment it makes in real property and personal property assets that would revert to South San Francisco upon termination of the agreement. The simplest way to determine residual value would be by straight-line depreciation based on installation dates, investment values and the useful lives for different assets described in this report.

With such an amendment, the exact term length of the JPA would not be as critical because SMCHD would be able to receive fair compensation for any investments it makes. For example, a dock replaced five years before the expiration of the JPA would still have 25/30 (83.3%) of its value at JPA expiration, and SSF would compensate SMCHD at that level. (Page 39).

This provision is included in the draft agreement.

Alternatives:

Management contract: The District asked Dornbusch to also review the potential of a management contract. In their analysis, it should be noted that, while only counting enterprise revenue, all expenses (enterprise and public) were included. This addresses the reality for SSF, which would be to not allocate public funds to the operation of the facility, which it has not done previously, but the District has been doing, presumably since 1977.

Since OPM enterprise revenue is projected to fall short of total OPM expenses (enterprise and public), SSF would need to plug the difference with an annual allocation or subsidy. In effect, the annual funds that SSF would need to provide would be roughly equivalent to the public revenue that is currently allocated to OPM by the District, plus whatever management fee might be negotiated between SMCHD and SSF (as noted previously, 3% is typical).

In addition, SSF would be responsible for all capital improvements, so SMCHD would not need to undertake the CIP. From the perspective of SMCHD, a management contract would have no risk as expenses would be covered, the management fee would be guaranteed, and there would be no capital investment. However, from the perspective of SSF, the management contract structure would mean an annual subsidy and significant capital investment. In the absence of the public revenue currently allocated to SMCHD by San Mateo County, SSF would not find this to be an attractive proposition.

In addition, as has previously been discussed, SSF would not entertain the possibility of a management contract.

No new agreement: If the District and the City do not enter into a new agreement, the current JPA will end in November 2026. If there is no new agreement, it will be difficult for the District to justify capital expenditures, as there is no provision for payment for assets at termination (which is included in the proposed draft Agreement). This will result in deteriorating conditions, poor service to the public and potentially decreasing occupancy. Additionally, the 1977 agreement has no clear statements of responsibility for protection against sea level rise, landside inundation or landfill subsidence, and includes no procedure for terminating the agreement. These matters are addressed in the current agreement.

Staff believes that the proposed agreement is a good agreement, serves the public well, protects the District, and provides opportunities for termination of the agreement in fifteen years (i.e. seven years after the termination of the existing agreement), and then again in an additional ten years, prior to the eventual termination of the agreement in 35 years. Staff believes that the District, the City and the public are best served by execution of this agreement, does not believe a better agreement can be reached by waiting, and does not recommend the 'no new agreement' alternative.

Discussion:

In February 2017, this Commission directed staff to work with the City and the Liaison Committee on drafting a new agreement for operation of OPM by the District.

That effort was expanded to incorporate discussion, drafting and agreement on an Implementation Agreement which was completed in September 2017.

The Liaison Committee met most recently on April 17, 2018, received a report from City Manager Mike Futrell and District staff. The Committee reviewed the basic elements of a potential new agreement and directed staff to continue to develop these for inclusion in an agreement for review by this Commission and the City Council.

This Commission received an update on October 4, 2018, specifically on the progress made on development of a new agreement with the City. Additionally, staff brought forward the full agreement at the October 17, 2018 meeting. This Commission did not discuss the matter. There have been some changes to the Agreement and Exhibits

since the October 17 meeting; these are highlighted in the draft agreement (Attachment 2).

The Agreement is the result of a hard work on both sides, and incorporates several important goals of the District:

- 1) States that the City is solely responsible for protection against sea level rise, water quality and landfill subsidence;
- 2) Incorporates the Dornbusch recommendation regarding the term of a new agreement;
 - a) The Agreement divides the term into three components: a 15-year initial term, with two ten-year options, which renew automatically unless action is taken by either party not to renew.
- 3) Incorporates the Dornbusch recommendation regarding payment to the District for the depreciated value of our capital assets on termination; and
- 4) Clarifies roles and responsibilities across the entire area and establishes a cooperative framework for the City and District to collaborate on providing cost effective and efficient services to the public.

Although still in draft form, the General Manager will walk through the fundamental deal points in a presentation and answer any questions the Commission may have about the draft agreement.

Recommendation:

Staff recommends that this Commission review the draft and approve execution of the agreement and authorize the General Manager to sign for the District. Additionally, while this Agreement has not been approved the City Council, staff recommends that this Commission authorize the General Manager and District Counsel to incorporate any non-material changes that may be requested.

Attachments:

Att. 1: [January 2018 Dornbusch Report](#)

Att. 2: [DRAFT Agreement between South San Francisco and Harbor District](#)