

PORT ORDINANCE NO. 4792

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND SUPPLEMENTAL AGREEMENT TO THE LEASE WITH PACIFIC LAYBERTHING SOUTH, LLC, FOR WATER AND LAND AREA AT BERTH 68, TO EXTEND THE AGREEMENT MAXIMUM TERM BY SIX MONTHS THROUGH OCTOBER 31, 2025, WHICH PROVIDES APPROXIMATELY \$276,000 ADDITIONAL REVENUE; AND FINDING THAT THE PROPOSED ACTION IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated May 8, 2025, (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, Section 706 of the City of Oakland ("City") Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide important services for customers of the Port, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property in the form of a lease will not interfere with the Tidelands Trust; and

WHEREAS, the Port has an existing lease dated March 1, 2021 with Pacific Layberthing South, LLC, a California limited liability company ("Lessee"), as amended by a First Supplemental Agreement to the lease (together, the "Lease") to use a certain portion of Port owned property commonly referred to as Berth 68 of the Howard Terminal area ("Premises") for the layberthing of the USNS John Glenn; and

WHEREAS, the Port and Lessee have agreed that it is to their mutual benefit to amend certain provisions of the Lease;

NOW, THEREFORE, BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

Section 2. The Board hereby finds and determines as follows:

A. The proposed Second Supplemental Agreement to the Lease with Lessee is exempt from the requirements of the California Environmental Quality Act ("CEQA") because the proposed action consists of leasing of existing structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, as further defined in Section 15301 of the CEQA Guidelines.

B. Port staff have negotiated and recommend entering into the Second Supplemental Agreement to the Lease, which:

1. Term: Extends the term of the Lease by a six-month extension, expiring on October 31, 2025; and
2. Compensation and Performance Deposit: Fixed monthly rent remains at \$1,500/day and the performance deposit remains at \$90,000.

Other terms and conditions of the Lease remain unchanged.

Section 3. The Board hereby authorizes the Executive Director or her designee to execute the Second Supplemental Agreement to the Lease with Lessee, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

Section 4. This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement, or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Port. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

Section 5. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, May 8, 2025. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Dominguez Walton, Lee, Leslie, Martinez, Myres and President Colbruno - 7. Noes: 0.

Daria Edgerly,

Secretary of the Board

