

PORT ORDINANCE NO. 4829

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASE AGREEMENT WITH DHNC, INC., FOR WATER AND LAND AREA AT BERTHS 8 AND 9, FOR A MAXIMUM TERM OF FIVE YEARS AND SIX MONTHS, RESULTING IN APPROXIMATELY \$314,000 IN AVERAGE ANNUAL 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 2.1, dated March 26, 2026, (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 and DHNC, Inc. ("Lessee") have agreed that it is to their mutual benefit to execute a lease for the layberthing of two Department of Transportation Maritime Administration ("MARAD") vessels (hereinafter 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 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 the Lease, which includes but is not limited to the following terms:

1. Premises: Approximately 205,738 square feet of water area at Berth 8 and 4,082 square feet of land at Berth 9.
2. Use: Layberthing of two (2) MARAD vessels. Vessels must have shore-side and vessel-side electrical infrastructure to enable them to plug into and use shore power.
3. Term, Term Extensions, and Occupancy: The Lease effective date is April 1, 2026. DHNC must occupy the Premises by March 31, 2027, or the lease will automatically terminate. The initial term shall commence when at least one (1) of the vessels arrives at the Premises. The initial term is one (1) year and Lessee shall have up to four (4) one-year options and one (1) six-month option to extend the term at Lessee's sole discretion. The maximum term is 5.5 years (66 months) after occupancy.
4. Termination: Lessee has the right, in its sole discretion, to terminate the lease with no less than 30 days' advance written notice to the Port if (1) the Federal Government terminates its agreement with Lessee or, (2) if the Port is unable to complete certain specified dredging obligations. The Port does not have a termination right, unless Lessee is in default or if the Federal Government contract terminates or as may otherwise be required by law.
5. Compensation and Performance Deposit: Fixed monthly rent is \$822 per day (approximately \$300,000 annualized) at the start of the Initial Term. Fixed monthly rent increases two percent (2%) each year except for the last six months of the maximum term (if extended), during which monthly rent does not escalate. Rent commences upon occupancy. Performance deposit is equal to three (3) months' rent, or initially \$75,008 with increase commensurate with rent increases.
6. Improvements, Maintenance and Utilities: Lessee is responsible for the cost, installation, and maintenance of any improvements at Berths 8 and 9 which will likely be limited to the installation of fencing and bollards. Lessee is responsible for all utility costs.
7. Dredging: Port is responsible for dredging Berth 8 to the to -30 feet MLLW ("Initial Dredging") at an estimated cost of \$750,000, which will be reimbursed in full by Lessee upon completion of the dredging, regardless of whether Lessee takes occupancy of the Premises. Port will perform a structural assessment of Berth 8 wharf prior to committing to the Initial Dredging to ensure that the dredging will not damage or compromise the wharf structure. During the dredging, the Port will provide Lessee with no-cost temporary berthing elsewhere within the Port if a berth(s) is available. After the Initial

Dredging, Lessee is responsible for any subsequent dredging that may be necessary during the Term, at Lessee's performance and sole cost.

Section 3. The Board hereby authorizes the Executive Director or her designee to execute 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, March 26, 2026. Passed to print for one day by the following vote: Ayes: Commissioners Dominguez Walton, Muhammad, Myres, Wong and President Cluver - 5. Noes: 0. Excused: Commissioners Leslie and Martinez - 2.

Daria Edgerly,

Secretary of the Board