

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

10/24/2024
Item No.: 6.3
RS/pcm



ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO THE LICENSE AND CONCESSION AGREEMENT WITH CONGLOBAL INDUSTRIES, LLC TO EXTEND THE AGREEMENT TERM BY THREE YEARS THROUGH JUNE 30, 2028, WHICH PROVIDES AVERAGE ANNUAL FIXED RENT OF APPROXIMATELY \$2.7 MILLION; 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 6.3, dated October 24, 2024, (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 license and concession agreement ("Lease") dated June 1, 2019 with ConGlobal Industries, LLC, a Delaware limited liability company ("ConGlobal"), as amended by the First Amendment to the Lease effective April 1, 2021, for ConGlobal to use a certain portion of Port-owned property located in the Former Fleet and Industrial Supply Center, Oakland of the United States Navy consisting of approximately 14.6 acres of land more particularly described in the Lease ("Premises"); and

WHEREAS, ConGlobal utilizes the Premises to operate a container depot and provide support services, including container/chassis storage and repair and refrigerated unit preparation under the Lease; and

WHEREAS, the Port and ConGlobal 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 Amendment to the Lease with ConGlobal 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 Amendment to the Lease, which:

1. Term: Extends the term of the Lease to June 30, 2028, with a conditional negotiation opportunity for ConGlobal if the premises are available after June 30, 2028; and
2. Deployment of Zero Emissions Equipment: At its sole cost, ConGlobal will deploy the following zero-emissions (ZE) equipment: two service vehicles (e.g., pick-up trucks) by January 1, 2026; two yard hostlers by June 30, 2027; and all related charging infrastructure, if applicable. If these requirements cannot be met, ConGlobal must notify the Port no later than October 31, 2025 and January 1, 2027, respectively, for which notice must include documentation demonstrating infeasibility and an alternative proposal to advance the deployment of ZE equipment, subject to the approval of the Port's Executive Director; and
3. Clarification to Title Provisions for Improvements and Equipment: ConGlobal will have title to the ZE equipment it deploys, and the Port will have the option to purchase said equipment at fair market value.
4. Monthly Rent: Provides that beginning on July 1, 2025, the monthly rent will increase by 14%, and on July 1 of each subsequent year, monthly rent will increase by 5%; and
5. Oil Water Separator Compliance and Maintenance: Clarifies that ConGlobal is responsible for oil water separator operation and maintenance.

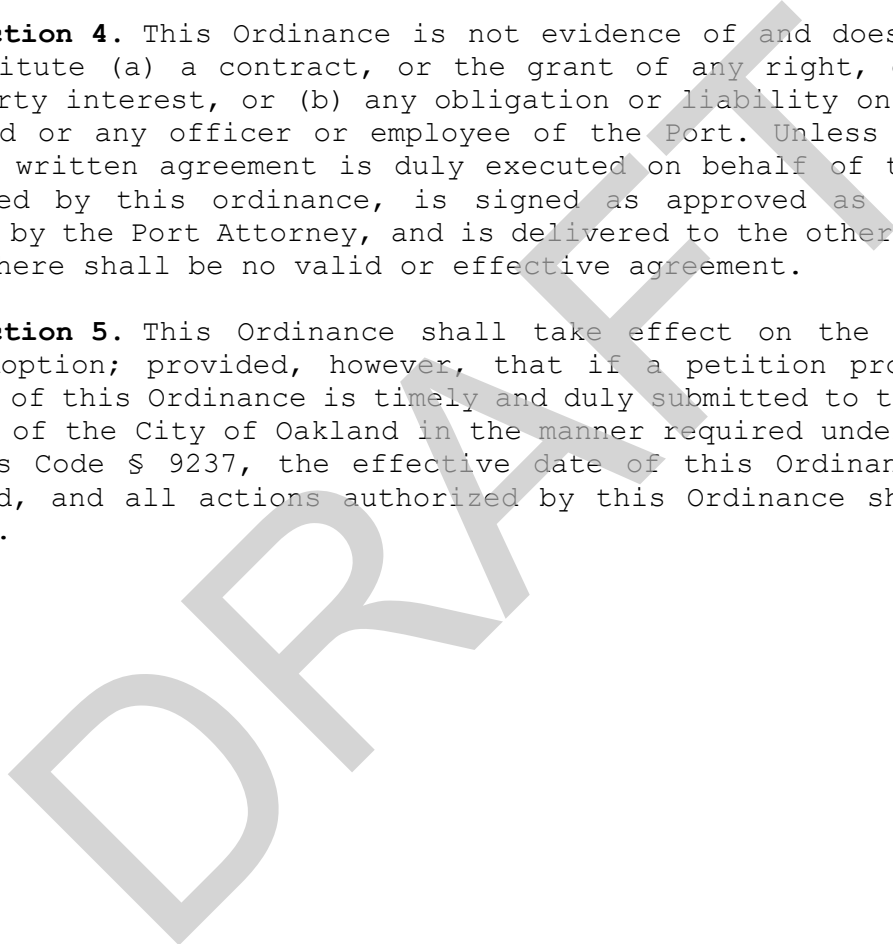
6. Lien Free Condition: Adds a new section on lien free condition.
7. Environmental Exhibit and Notice: Provides updated environmental exhibit and updated notice provisions.

Other terms and conditions of the Lease remain unchanged.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the Second Amendment with ConGlobal, 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.



President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney