

Her

BOARD OF PORT COMMISSIONERS CITY OF OAKLAND

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO (1) EXECUTE SECOND AND THIRD LEASE AMENDMENTS WITH U.S. CUSTOMS AND BORDER PROTECTION FOR OFFICE AND PARKING SPACE AT 700 MARITIME STREET WITHIN THE PORT AREA WITH A MAXIMUM LEASE TERM THROUGH JUNE 30, 2028, RESULTING IN ANNUAL RENT OF \$0, AND (2) NEGOTIATE AND EXECUTE A RENTAL AGREEMENT FOR A MODULAR OFFICE BUILDING FOR CBP, WHICH COST SHALL BE REFLECTED IN THE THIRD LEASE AMENDMENT; AND FINDING THE PROPOSED ACTION IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated June 8, 2023 ("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, U.S. Customs and Border Protection ("CBP") currently leases office and parking space from the Port at 700 Maritime Street ("Lease"); and

WHEREAS, CBP requested a Second and Third Amendment to the Lease primarily to extend the term and make other minor modifications; and

WHEREAS, 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; now, therefore,

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

Section 1. The Board hereby finds and determines this action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the CEQA Guidelines. This project is categorically exempt pursuant to Section 15301, Existing Facilities, which exempts from CEQA the leasing of existing facilities involving negligible or no expansion of existing or former use. No further review is required under CEQA.

Section 2. The Board hereby authorizes the Executive Director of the Port ("Executive Director") to:

A. Execute on behalf of the Board the proposed Second and Third Amendments in accordance with the following terms and conditions, as further set forth in the Agenda Report:

1. Extension of the lease term through June 30, 2028, by the addition of five Option Years, with an annual automatic renewal unless terminated by either party in writing.

2. CBP to reimburse the Port \$31,500 per year for the Port to perform general maintenance activities.

3. Port to continue rental of a modular office building (Building 504A) located on the Premises, which current monthly rental cost is \$5,669, the costs of which are to be reimbursed by CBP.

4. The current modular office building rental agreement expires at the end of 2023. However, the modular office building vendor has not provided a proposal to extend the rental agreement. Therefore, CBP recognizes that modular building rental costs are not yet available and once available, a subsequent lease amendment will be required to incorporate the additional modular building rental costs into the Lease to reimburse the Port in full for the costs associated with the rental.

B. Negotiate and execute a modular office building rental agreement with the current vendor or alternative vendor for a modular office building to be used by CBP on the Premises; and execute a subsequent Third Amendment with CBP to update the costs of the modular office building rental for which CBP will reimburse the Port in full. No other changes would be allowed as part of Third Amendment without additional Board approval.

C. Execute the Second and Third Amendments, subject to approval as to form and legality by the Port Attorney, and make such additions, modifications, or corrections as necessary to implement the agreement or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

Section 3. This ordinance is not evidence of and does not create or constitute (a) a contract(s), 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 contract 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 other contracting party, there shall be no valid or effective contract.

Section 4. 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.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney