

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

5/25/23
Item No.: 4.1
CT/pcm

HEP

RESOLUTION APPROVING THE EXTENSION OF THE LETTERS OF CREDIT SUPPORTING THE PORT'S COMMERCIAL PAPER PROGRAM FOR THREE AND ONE-HALF YEARS AT AN ANNUAL FEE OF APPROXIMATELY \$840,000; AUTHORIZING THE EXECUTIVE DIRECTOR AND CHIEF FINANCIAL OFFICER TO EXECUTE AMENDMENTS TO THE REIMBURSEMENT AGREEMENTS AND FEE AGREEMENTS WITH BANK OF AMERICA NATIONAL ASSOCIATION, AND CERTAIN OTHER DOCUMENTS RELATING TO THE ABOVE; AND APPROVING CERTAIN OTHER ACTIONS.

WHEREAS, the Board of Port Commissioners of the City of Oakland, California (the "Board") is authorized by Section 706(24) of the Charter of the City of Oakland to provide for the financing and refinancing of Port of Oakland ("Port") facilities through the issuance and sale of debt instruments, including Commercial Paper Notes (the "Notes"), payable exclusively from revenues, other funds and property of the Port; and

WHEREAS, Ordinance No. 2858, adopted by the Board on February 21, 1989, provides that the Notes shall be issued and sold in such manner and upon such terms and conditions, and contain such provisions and covenants, as the Board shall fix and establish; and

WHEREAS, the Board anticipates the need for certain capital improvements ("Improvements") and has determined that it is in the best interests of the Port to provide funds for the Improvements through issuance of the Notes, the proceeds of which Notes may also be used to pay costs of issuance of said Notes and to pay for one or more related liquidity facilities, including but not limited to letters of credit issued by a bank or banks; and

WHEREAS, the Board has previously authorized the issuance of Port of Oakland, California Commercial Paper Notes in an aggregate total amount outstanding not to exceed \$300 million (the "Commercial Paper Program"), and the execution of related credit facilities pursuant to various Board Resolutions, including: Board Resolution No. 99359, adopted by the Board on August 31, 1999; Board Resolution No. 98375, adopted by the Board on September 15, 1998, as amended by Board Resolution No. 02429, adopted by the Board on December 17, 2002; Board Resolution No. 05195, adopted by the Board on July 5, 2005; Board Resolution No. 10-74, adopted by the Board on June 22, 2010; Board Resolution No. 12-59, adopted by the Board on May 17, 2012; Board Resolution No. 13-61, adopted by the Board on June 13, 2013; Board Resolution No. 16-49, adopted by the Board on April 28, 2016; Board Resolution No. 17-23, adopted by the Board on May 4, 2017; and Board Resolution No. 19-21, adopted by the Board on April 25, 2019; and

WHEREAS, the Board has authorized the issuance of Port of Oakland, California Commercial Paper Notes Series A, Series B and Series C (collectively, the "ABC Notes") pursuant to the Trust Indenture, dated as of October 1, 1998 (the "Original 1998 Indenture"), as supplemented by that certain First Supplemental Trust Indenture, dated as of August 2, 2010, Second Supplemental Trust Indenture, dated as of June 1, 2017 and Third Supplemental Trust Indenture, dated as of May 10, 2019 (the Original 1998 Indenture as supplemented, the "1998 CP Indenture"), each of which is by and between the Board and U.S. Bank National Association (as successor in interest to U.S. Bank Trust National Association, as trustee (the "Trustee")); and

WHEREAS, the Board has authorized the issuance of Port of Oakland, California Commercial Paper Notes Series D, Series E and Series F (collectively, the "DEF Notes") pursuant to the Trust Indenture, dated as of September 1, 1999 (the "Original 1999 CP Indenture"), as supplemented by that certain First Supplemental Trust Indenture, dated as of June 1, 2017 and Second Supplemental Trust Indenture, dated as of May 10, 2019 (the Original 1999 CP Indenture, as supplemented, the "1999 CP Indenture"), each of which is by and between the Board and the Trustee; and

WHEREAS, the ABC Notes are currently supported by a credit facility consisting of a Reimbursement Agreement dated as of June 13, 2016 (including its accompanying Fee Letter, the "Existing ABC BofA Reimbursement Agreement") with Bank of America, N.A. ("BofA") with respect to the ABC Notes, which facility has an expiration date of June 30, 2023 and an original Stated Amount (as defined in the 1998 CP Indenture) of \$150 million in principal amount of the ABC Notes, plus applicable coverage for interest; and

WHEREAS, the DEF Notes are currently supported by a credit facility consisting of a Reimbursement Agreement dated as of June 13, 2017 (including its accompanying Fee Letter, the "Existing DEF BofA Reimbursement Agreement") with BofA with respect to the DEF Notes, which facility has an expiration date of June 30, 2023 and an original Stated Amount (as defined in the 1999 CP Indenture) of \$50 million in principal amount of the DEF Notes, plus applicable coverage for interest; and

WHEREAS, there is currently outstanding approximately \$7.3 million in ABC Notes, and \$25.2 million in DEF Notes, issued pursuant to the Commercial Paper Program; and

WHEREAS, in light of the expiration of the Existing ABC BofA Reimbursement Agreement (and the related letter of credit) and Existing DEF BofA Reimbursement Agreement (and the related letter of credit) on June 30, 2023, the Board wishes to extend the existing credit facilities with BofA for three and one-half additional years until December 31, 2026; and

WHEREAS, there has been presented to the Board the form of the First Amendment to Reimbursement Agreement and First Amendment to Amended and Restated Fee Letter Agreement for each of the ABC Notes and the DEF Notes (together, the "Reimbursement Agreement Amendments"); and

WHEREAS, there has been presented to the Board a form of Offering Memorandum relating to the issuance of the Notes; and

WHEREAS, such documents appear to be in appropriate form and the terms are satisfactory to the Board, and the Board has determined that it is in the best interest of the Port to provide funds to finance the Improvements, to support the Commercial Paper Program, to maintain related credit facilities, and to execute the Reimbursement Agreement Amendments; and

WHEREAS, the Board has reviewed and evaluated the Agenda Report Item No. 4.1, dated May 25, 2023, and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Recitals. The Board hereby finds and declares that the foregoing recitals are true and correct.

2. CEQA. The Board hereby finds that the proposed action is not subject to the California Environmental Quality Act ("CEQA") because the proposed action does not involve an activity that may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment as further defined in Section 21065 of the Public Resources Code.

3. Approval of Documents, Authorization for Execution. The form, terms and provisions of the Reimbursement Agreement Amendments (collectively, the "Documents") are in all respects approved, and any one or more of the President of the Board, any Vice President of the Board, the Executive Director of the Port, or the Chief Financial Officer of the Port (collectively, the "Authorized Board Representatives") are hereby authorized, empowered, and directed to execute and deliver the Documents, including counterparts thereof, in the name and on behalf of the Board, subject to the approval of the Port Attorney or her authorized designee. The Documents, as executed and delivered, shall be substantially in the forms now before this meeting and hereby approved, with such changes therein (including any changes required by a credit enhancer in order to obtain a letter of credit) as shall be approved by the officer or officers of the Port executing the same and by the Port Attorney or her authorized designee; the execution thereof shall constitute conclusive evidence of the Board's approval of any and all changes or revisions therein from the form of the Documents now before this meeting; and from and after the execution and delivery of the Documents, the officers, agents and employees of the Board are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Documents. Copies of the Documents in substantially final form as presented to the Board are on file with the Secretary of the Board.

4. Offering Memorandum. The distribution of the Offering Memorandum by Goldman Sachs & Co., Inc., as the dealer with respect to the Notes (the "Dealer"), in connection with the offering and sale of the Notes in substantially the form of the draft thereof presented at this meeting, with such changes therein as shall be approved by the President of the Board, any Vice President of the Board, or any Authorized Board Representative, is hereby approved. The President of the Board, any Vice President of the Board, or any Authorized Board Representative, or any one of them, are

hereby authorized and directed to execute and deliver the Offering Memorandum in the name of and on behalf of the Board, and to make any changes or revisions necessary thereto in order for the Offering Memorandum to meet the requirements of the Board under the Documents and this resolution (this "Resolution"). The execution and delivery thereof shall constitute conclusive evidence of the Board's approval of any and all changes or revisions therein from the form of the Offering Memorandum now before this meeting. The Dealer, as previously selected by the Board, is hereby authorized to distribute the Offering Memorandum in such final form. The approval of the Offering Memorandum shall include any supplements or updates thereto subsequently executed and delivered from time to time by the President of the Board, any Vice President of the Board, or any Authorized Board Representative. A copy of the Offering Memorandum in substantially final form as presented to the Board is on file with the Secretary of the Board.

5. Additional Authorization; Ratification. The Authorized Board Representatives and all officers, agents and employees of the Board or the Port, for and on behalf of the Board, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Documents, and any supplements or updates thereto, and to carry out the terms thereof. Said officers and other persons are further authorized and directed, for and on behalf of the Board, to execute all papers, documents, certificates and other instruments that may be required in order to carry out the authority conferred by this Resolution, including giving any notices required in connection therewith, subject in each case to the approval, if necessary, of the Port Attorney or his authorized designee. Any and all actions taken by the Authorized Board Representatives and all officers, agents, and employees of the Board or the Port, for and on behalf of the Board, before the adoption of this Resolution that is within the authority conferred by this Resolution are hereby ratified, confirmed, and approved.

6. Severability. The provisions of this Resolution are hereby declared to be severable and, if any section, phrase, or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereof.

7. Effective Date. The effective date of this Resolution shall be its date of adoption.

8. Resolution Not Evidence of Contract. This Resolution 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 Board. This Resolution approves and authorizes the execution of agreement(s) in accordance with the terms of this Resolution. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this Resolution, 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.

9. Independent Judgment. In acting upon the matters contained herein, 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.

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