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**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-82**

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN INFORMAL RESOLUTION AGREEMENT AMONG THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS CITY COUNCIL; THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; AND THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS REGARDING EPA COMPLAINT NOS. 13R-17-R9 AND 14R-17-R9.

**WHEREAS**, by letter dated July 18, 2017, the United States Department of Transportation ("DOT") Departmental Office of Civil Rights ("DOCR") and the United States Environmental Protection Agency ("EPA") External Civil Rights Compliance Office ("ECRCO") accepted a complaint dated April 4, 2017, brought by Earthjustice on behalf of the West Oakland Environmental Indicators Project ("WOEIP") under Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000d to 2000d-7 and DOT and EPA regulations (49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively), that alleged discrimination by the City of Oakland ("City") and the Port of Oakland ("Port") based on race, color, and national origin in violation of Title VI (DOT #2017-0093 and EPA Complaint Nos. 13R-17-R9 and 14R-17-R9) ("Complaint"); and

**WHEREAS**, in its July 18, 2017, letter, DOT and EPA indicated that their investigation would focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

2. Whether the City's and Port's methods, including their public participation processes, for approving and authorizing new development and expanded activities at the Port of Oakland and Oakland Army Base subject the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively; and

**WHEREAS**, during the course of EPA's investigation, the City and the Port negotiated the terms of a proposed Informal Resolution Agreement ("Agreement") to resolve the Complaint and terminate EPA's investigation of it; and

**WHEREAS**, by letter dated April 26, 2019, DOT administratively closed its complaint (DOT #17-0093) and "defer[ed] the final voluntary resolution of the matters raised in the complaint to EPA." DOT would not be a party to the Agreement; and

**WHEREAS**, the proposed Agreement does not constitute an admission by the City and/or the Port of a violation of, or a finding of compliance or noncompliance by EPA with, applicable federal nondiscrimination laws and regulations; and

**WHEREAS**, EPA will cease investigation of Complaint Nos. 13R-17-R9 and 14R-17-R9 upon the signing of the Agreement and will provide technical assistance to support the City and the Port in the implementation of the commitments contained therein;

**NOW, THEREFORE, BE IT**

**RESOLVED** that the Board of Port Commissioners ("Board") hereby approves and authorizes the Executive Director to execute for and on behalf of the Board the Agreement among the City, EPA, and the Port; and be it

**FURTHER RESOLVED** that 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 an agreement 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 parties, there shall be no valid or effective agreement; and be it

**FURTHER RESOLVED** that this resolution shall become effective immediately upon adoption by the Board.

At the regular meeting held on July 25, 2019  
Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6

Excused: President Butner – 1

Noes: – 0

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-83**

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO WAIVE FORMAL COMPETITIVE PROCUREMENT PROCEDURES AND ENTER INTO A SUPPLEMENTAL AGREEMENT WITH GRANICUS, INC. TO EXTEND THE SUBSCRIPTION FOR GRANICUS BOARD MEETING MANAGEMENT PRODUCTS FOR TWO YEARS (FROM SEPTEMBER 1, 2019, THROUGH AUGUST 31, 2021) IN AN AMOUNT NOT TO EXCEED \$90,000.**

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 2.1, dated July 25, 2019 and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, that 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 RESOLVED AS FOLLOWS:**

**Section 1.** Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that the requested action is exempt from the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that entering into the requested agreement will not have a significant effect on the environment and therefore is not a "project" under CEQA.

**Section 2.** The Board hereby approves and authorizes the Executive Director to waive competitive procurement procedures and to enter into a supplemental agreement with **Granicus, Inc.** to extend the subscription for Granicus board meeting management products for two years (from September 1, 2019, through August 31, 2021) for a total cost not to exceed \$90,000, as further described in the Agenda Report, and to execute all documents as may be appropriate to consummate this transaction, provided that all agreements are approved as to form and legality by the Port Attorney.

**Section 3.** 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 a contract in accordance with the terms of this resolution. Unless and until a separate written contract 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 other contracting party, there shall be no valid or effective contract.

**Section 4.** This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on July 25, 2019  
Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6  
Excused: President Butner – 1  
Noes: – 0

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-84**

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH HARRIS MILLER MILLER & HANSON INC. TO PROVIDE AVIATION NOISE CONSULTING SERVICES TO THE AIRPORT'S NOISE ABATEMENT AND ENVIRONMENTAL AFFAIRS OFFICE FOR FIVE YEARS (FISCAL YEARS 2020 THROUGH 2024) FOR AN AMOUNT NOT TO EXCEED \$1,150,000.**

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.1, dated July 25, 2019, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, that 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 RESOLVED AS FOLLOWS:**

**Section 1.** Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that:

A. The requested action is exempt from the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that entering into the requested professional services agreement will not have a significant effect on the environment and therefore is not a "project" under CEQA.

B. The requested action is for obtaining professional, scientific, or technical services that are temporary in nature and are in the public interest because of economy or better performance, and will not result in the loss of employment or salary by any person having permanent status in the competitive service.

**Section 2.** The Board hereby approves and authorizes the Executive Director to enter into a professional services agreement with **Harris Miller Miller & Hanson Inc.** to provide aviation noise consulting services to Oakland International Airport's Noise Abatement and Environmental Affairs Office for a period of five years, Fiscal Year 2020 through 2024, for a total cost not to exceed \$1,150,000, as further described in the Agenda Report, and provided that all agreements are approved as to form and legality by the Port Attorney.

**Section 3.** 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 a contract in accordance with the terms of this resolution. Unless and until a separate written contract 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 other contracting party, there shall be no valid or effective contract.

**Section 4.** This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on July 25, 2019  
Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6  
Excused: President Butner – 1  
Noes: – 0

*JM KA*

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-85**

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH CIRCA NOW, LLC FOR CREATIVE DESIGN SERVICES FOR A PERIOD OF TWO YEARS (ALONG WITH ONE ONE-YEAR OPTIONAL EXTENSION) FOR A TOTAL AMOUNT NOT TO EXCEED \$450,000.

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.2, dated July 25, 2019, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, that 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 RESOLVED AS FOLLOWS:**

**Section 1.** Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines that:

A. The requested action is exempt from the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that entering into the requested professional services agreement will not have a significant effect on the environment and therefore is not a "project" under CEQA.

B. The requested action is for obtaining professional, scientific, or technical services that are temporary in nature and are in the public interest because of economy or better performance, and will not result in the loss of employment or salary by any person having permanent status in the competitive service.

**Section 2.** The Board hereby approves and authorizes the Executive Director to enter into a professional services agreement with **Circa Now**,



LLC for creative design services for a period of two years in an amount not to exceed \$300,000, with one one-year extension option, pending performance, in an additional amount not to exceed \$150,000, for a combined maximum compensation of \$450,000 and a maximum contract term of three years, as further described in the Agenda Report, and provided that all agreements are approved as to form and legality by the Port Attorney.

**Section 3.** 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 a contract in accordance with the terms of this resolution. Unless and until a separate written contract 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 other contracting party, there shall be no valid or effective contract.

**Section 4.** This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on July 25, 2019  
Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6  
Excused: President Butner – 1  
Noes: – 0



**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-86**

RESOLUTION APPROVING AND AUTHORIZING PROJECT DESIGN BUDGET OF \$140,000 AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND SUPPLEMENTAL AGREEMENT WITH WEST YOST ASSOCIATES, INC. FOR AN ADDITIONAL MAXIMUM COMPENSATION NOT TO EXCEED \$354,000 FOR THE AIRCRAFT RESCUE AND FIRE FIGHTING WASH RACK REHABILITATION PROJECT AND FISCAL YEAR 2020 AIRPORT SANITARY SEWER CONDITION ASSESSMENT PLAN AT OAKLAND INTERNATIONAL AIRPORT.

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**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item No. 6.3 dated July 25, 2019 ("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**, on October 11, 2018, the Board authorized execution of a professional services agreement ("**Agreement**") with **West Yost Associates, Inc. ("West Yost")**, to provide engineering consulting services for sanitary sewer infrastructure projects at Oakland International Airport ("**Sanitary Sewer Improvements Projects**").

**WHEREAS**, that 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 RESOLVED AS FOLLOWS:**

**SECTION 1.** Based upon the information contained in the Agenda Report and testimony received, the Board hereby finds and determines that:

A. It is in the best interest of the Port to approve and authorize project budget for design services of \$140,000 for **the Aircraft Rescue and Fire Fighting Wash Rack Rehabilitation Project at Oakland International Airport ("ARFF Wash Rack Project")**,

B. The **Agreement with West Yost**, as supplemented, will constitute an agreement for obtaining professional, technical and specialized services that are temporary in nature and that it is in the best interest of the Port to continue to secure such services from **West Yost**.

C. These actions were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines ("Guidelines"). The general rule in Section 15061(b)(3) of the Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. Because it can be seen with certainty that there is no possibility that entering into a supplemental agreement with **West Yost** for design services may have a significant effect on the environment, this action is not a "Project" under CEQA, and is not subject to CEQA under the General Rule Exclusion.

D. Regarding the design services for the **ARFF Wash Rack Project**, this project is categorically exempt from CEQA Guidelines pursuant to Section 15302, Replacement and Reconstruction which exempts from CEQA the replacement or reconstruction of existing structures and activities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including replacement of existing utility facilities involving negligible or no expansion of capacity.

**SECTION 2.** The Board hereby:

A. Approves and authorizes project budget for design services of \$140,000 for the **ARFF Wash Rack Project**.

B. Approves a Supplemental Agreement with **West Yost** for engineering design services for the **ARFF Wash Rack Project** and **Sanitary Sewer Improvements Projects** in the additional amount of \$354,000 for a total maximum contract amount of \$1,579,000, as further described in the Agenda Report.

C. Authorizes the Executive Director to execute such supplemental agreement, subject to approval as to form and legality by the Port Attorney.

D. Authorizes the Executive Director to make such additions, modifications, or corrections as necessary to issue the Supplemental 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.

**SECTION 3.** 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. 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 other contracting party, there shall be no valid or effective agreement.

At the regular meeting held on July 25, 2019

Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and

President Cluver – 6

Excused: President Butner – 1

Noes: – 0

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-87**

**RESOLUTION (1) APPROVING ADDITIONAL PROJECT CONSTRUCTION BUDGET OF \$685,000 AND (2) AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CHANGE ORDER WITH TURNER CONSTRUCTION COMPANY FOR CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES FOR AN AMOUNT NOT TO EXCEED \$610,000 FOR THE MOVING WALKWAY REMOVAL AND RESTORATION PROJECT AT OAKLAND INTERNATIONAL AIRPORT.**

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 6.4 dated July 25, 2019 ("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**, on or about February 11, 2016, the Board authorized the Executive Director of the Port ("Executive Director") to enter into a contract with Turner Construction Company, Inc. ("Turner") for construction manager at risk services for upgrades to the International Arrivals Building at Oakland International Airport ("IAB CMR Contract"); and

**WHEREAS**, the IAB CMR Contract includes an option that the Port can exercise allowing Turner to serve as designer, manager and/or contractor for terminal-related projects as identified by the Port; and

**WHEREAS**, on May 24, 2018, the Board exercised the option and authorized the Executive Director to issue change order with Turner to proceed with several terminal improvement projects, including the **Moving Walkways Removal and Restoration Project ("Moving Walkways Project")**; and

**WHEREAS**, that 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 RESOLVED AS FOLLOWS:**

**SECTION 1.** Based upon the information contained in the Agenda Report and testimony received, the Board hereby finds and determines that:

- A. It is in the best interest of the Port to authorize and approve additional project budget for construction services in the amount of \$685,000 for the **Moving Walkways Project**.

- B. The proposed actions to approve project budget and authorize a contract change order for construction were reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. The proposed actions are categorically exempt from CEQA Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographic features, involving negligible or no expansion of use.

**SECTION 2.** The Board hereby:

- A. Approves the additional project budget for construction services in the amount of \$685,000 for the **Moving Walkways Project**.
- B. Authorizes the Executive Director to execute a contract change order with Turner for the IAB CMR Contract in an amount not to exceed \$610,000 for the **Moving Walkways Project**.

**SECTION 3.** 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 a contract in accordance with the terms of this resolution. Unless and until a separate written contract 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 other contracting party, there shall be no valid or effective contract.

At the regular meeting held on July 25, 2019

Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6

Excused: President Butner – 1

Noes: – 0

MA  
LBB

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

**RESOLUTION NO. 19-88**

**RESOLUTION APPROVING CONSENT TO  
ASSIGNMENT OF RIGHTS FROM CYPRESS PRIVATE  
SECURITY LP TO ALLIED UNIVERSAL SECURITY  
SERVICES FOR THE MARITIME SECURITY PATROL  
SERVICES CONTRACT AND PORT OF OAKLAND  
SECURITY OPERATIONS CENTER STAFFING  
CONTRACT.**

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item No. 6.6 dated July 25, 2019 ("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**, that 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; and

**WHEREAS**, on April 12, 2018, the Board approved the agreement with **Cypress Private Security, LP ("Cypress") for Port Security Operations Center Staffing ("PSOC Staffing Agreement")**; and

**WHEREAS**, on June 11, 2019, the Board approved the agreement with **Cypress for Maritime Security Patrol Services ("Maritime Security Agreement")**; and

**WHEREAS**, on or about June 17, 2019, **Cypress** notified the Port that **Cypress** was transferring all contracts, assets and liabilities to **Allied Universal Security Services ("Allied")** and sought the Port's consent to assignment of the **PSOC Staffing Agreement** and **Maritime Security Agreement** from **Cypress** to **Allied**;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**SECTION 1.** Based upon the information contained in the Agenda Report and testimony received, the Board hereby:

A. Consents and hereby grants **Cypress** the assignment of the **PSOC Staffing Agreement** and **Maritime Security Agreement** to **Allied** provided that such consent is granted upon the express condition that **Allied** shall assume all of the obligations and liability of **Cypress** under both **PSOC Staffing Agreement** and **Maritime Security Agreement** whether the obligations or liabilities arose before or after the effective date of the assignment and that **Cypress** is not hereby released from any obligation or liability under either the **PSOC Staffing Agreement** or **Maritime Security Agreement**, whether the obligation or liability arose before or after the effective date of the assignment to **Allied**, as more fully set forth in Agenda Report.

B. Authorizes the Executive Director to (i) execute a supplemental agreement for the **PSOC Staffing Agreement** to memorialize the consent to assignment, subject to approval as to form and legality by the Port Attorney, (ii) execute a supplemental agreement for the **Maritime Security Agreement** to memorialize the consent to assignment, subject to approval as to form and legality by the Port Attorney, and (iii) make such additions, modifications, or corrections as necessary, 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.

**SECTION 2.** 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. 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 other contracting party, there shall be no valid or effective agreement.

**SECTION 3.** This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on July 25, 2019  
Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6  
Excused: President Butner – 1  
Noes: – 0



BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND

7/25/19  
Item No.: 6.7  
DSC/msr

MA

RESOLUTION NO. 19-89

RESOLUTION APPROVING AND AUTHORIZING THE BOARD PRESIDENT TO EXECUTE A RETIREMENT AND ADVISORY SERVICES AGREEMENT WITH J. CHRISTOPHER LYTLE AND CERTIFYING: THAT J. CHRISTOPHER LYTLE HAS SPECIALIZED SKILLS TO FILL A CRITICALLY NEEDED POSITION FOR A LIMITED DURATION NOT TO EXCEED 960 HOURS FOR THE 2019-2020 FISCAL YEAR AND NOT TO LAST BEYOND DECEMBER 31, 2019; THAT J. CHRISTOPHER LYTLE HAS NOT RECEIVED ANY OTHER BENEFIT, INCENTIVE, COMPENSATION IN LIEU OF BENEFIT, OR OTHER FORM OF COMPENSATION IN ADDITION TO HIS HOURLY PAY; AND, THAT J. CHRISTOPHER LYTLE'S HOURLY RATE WILL BE \$193.21.

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 6.7 dated July 25, 2019 ("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**, in compliance with Government ("Gov.") Code section 7522.56 of the Public Employees' Retirement Law, the Board must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

**WHEREAS**, J. Christopher Lytle retired from the Port in the position of Executive Director effective midnight July 21, 2019; and

**WHEREAS**, Gov. Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is January 18, 2020, without this certification resolution; and

**WHEREAS**, Gov. Code section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

**WHEREAS**, the Board, the Port, and J. Christopher Lytle certify that J. Christopher Lytle has not and will not receive a Golden Handshake or any other retirement-related incentive; and

**WHEREAS**, the Board hereby appoints J. Christopher Lytle as an extra help retired annuitant effective July 22, 2019, to perform the duties of the Advisor to the Executive Director for the Port under Gov. Code section 21224; and

**WHEREAS**, the entire Retirement and Advisory Services Agreement ("Agreement") between J. Christopher Lytle and the Port has been reviewed by this body and is attached herein as Exhibit A; and

**WHEREAS**, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

**WHEREAS**, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

**WHEREAS**, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 162.50 (based on a 37.5 hour workweek) to equal the hourly rate; and

**WHEREAS**, the maximum monthly salary is \$31,397.09 and its hourly equivalent is \$193.21 (based on a 37.5 hour workweek); and

**WHEREAS**, the hourly rate paid to J. Christopher Lytle will be \$193.21; and

**WHEREAS**, J. Christopher Lytle has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate;

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board hereby certifies the nature of the appointment of J. Christopher Lytle as described herein and as detailed in the attached Agreement and that this appointment is necessary to fill the critically needed position of Advisor to the Executive Director for the Port by July 22, 2019, because J. Christopher Lytle, based on his experience in trade and transportation and his specific experience and achievements at the Port, possesses specialized skills that he can utilize as a retired annuitant on the Port's behalf to assure the Port's business and operational continuity; and be it

**FURTHER RESOLVED**, that the Board hereby approves the form of the Agreement attached hereto as Exhibit A and authorizes the Board President to execute it providing for, among other things: (a) an hourly rate of \$193.21; (b) a maximum of 960 work hours in any Port fiscal year; (c) a limited duration appointment that will not last beyond December 31, 2019; and, (d) a release of claims; and be it

**FURTHER RESOLVED**, that 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 an agreement 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 and approved as to form by the Port Attorney, and is delivered to the other contracting parties, there shall be no valid or effective agreement; and be it

**FURTHER RESOLVED**, that 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 materials and in testimony received.

At the regular meeting held on July 25, 2019

Passed by the following vote:

Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and  
President Cluver – 6

Excused: President Butner – 1

Noes: – 0

# EXHIBIT A

## **RETIREMENT AND ADVISORY SERVICES AGREEMENT**

This Retirement and Advisory Services Agreement ("Agreement"), dated for reference purposes only as of July 22, 2019, is made by and between J. Christopher Lytle ("LYTLE") and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "PORT" or "EMPLOYER") on the terms of LYTLE'S retirement from employment and of retention of his services as a retired annuitant advisor to the Executive Director. LYTLE and the PORT are referred to herein collectively as the "Parties" and each of the Parties is, from time-to-time, referred to herein as a "Party".

### **Recitals.**

a. LYTLE has served as Executive Director of the PORT since July 22, 2013, pursuant to an Employment Agreement executed June 27, 2013, and expired July 21, 2016, and a subsequent Employment Agreement executed July 27, 2016, the term of which is set to expire on July 21, 2019, (collectively, the "Employment Agreements").

b. LYTLE has performed his duties under the terms of the Employment Agreements, and the PORT has performed its obligations under the terms of Employment Agreements.

c. LYTLE wishes to retire at the expiration of the Employment Agreements as of midnight on July 21, 2019.

d. The Board of Port Commissioners ("BOARD") appointed an Acting Executive Director effective July 22, 2019, and intends to proceed to recruit and thereafter hire a new Executive Director.

e. During all or a portion of the tenure of the Interim Executive Director and the process of recruiting a new Executive Director ("Transition Period"), the PORT wishes to retain LYTLE for the term set forth in this Agreement to provide advise and counsel to the Interim Executive Director and/or incoming Executive Director (collectively, the "Executive Director") on (1) means and methods to assure organizational and business continuity, (2) contact points of communication with PORT tenants, customers, and stakeholders to provide information during the Transition Period and (3) any other advise and counsel as deemed needed by the Executive Director for his work ("Scope of Services").

f. LYTLE agrees to provide such Scope of Services to the Executive Director as a retired annuitant pursuant to Government Code Section 7522.56 in the limited duration and critically needed position of Advisor to the Executive Director and the BOARD agrees to the retention of such services by Port Resolution No. \_\_\_\_.

Now therefore, in consideration of the Parties' mutual agreements set forth herein, and for good and adequate consideration received including the release of claims set forth in Section 4, the Parties agree as follows:

**1. Retirement.**

(a) Effective Date: LYTLE shall retire effective midnight July 21, 2019 ("Retirement Date"). LYTLE will retire pursuant to and under the **California Public Employees' Retirement System** ("Retirement Plan"). LYTLE will receive retirement benefits, in accordance with the Retirement Plan.

(b) Payments on Retirement Date. On the next regularly scheduled pay date following the Retirement Date, LYTLE will be paid his accrued but unused vacation balance, scheduled holidays, as well as his final wages, in accordance with applicable law.

(c) Return of PORT Property. On July 19, 2019, LYTLE shall return to the PORT all PORT property, including without limitation any and all PORT documents, equipment, security pass, except that the LYTLE may retain access to his personal laptop computer, and cell phone until Separation Date (defined below). In addition, LYTLE will be permitted access to 530 Water Street and parking at the Washington Street garage (level 5 or above) until the Separation Date. As of Retirement Date, LYTLE shall not have access to records, emails or electronic systems of the PORT (except as designated by the PORT), provided however, the Parties agree that the PORT, for thirty (30) days after the end of the Retirement Date, will provide an automatic response to persons emailing LYTLE at his PORT email address referring such persons to an alternative email address that LYTLE provides. Thereafter, the PORT will cease or delete LYTLE's email account with the PORT. In addition, for thirty (30) days after the end of the Retirement Date, the PORT will provide an automatic response on LYTLE's PORT voicemail referring callers to an alternative telephone number that LYTLE provides.

**2. Limited Duration Post-Retirement Annuitant.**

(a) Retired Annuitant. PORT will retain LYTLE as a temporary retired annuitant ("Temporary Annuitant") for the term set forth in subsection (b) below in the position of "Advisor to the Executive Director" under CalPERS law and regulations.

(b) Term. Subject to applicable laws and regulations, LYTLE will be retained as a limited-duration retired annuitant beginning on July 22, 2019 and ending on the Separation Date. "Separation Date" shall be the earliest of (i) December 31, 2019, (ii) the date LYTLE terminates his retention with the PORT, if prior to December 31, 2019, or (iii) the date prior to December 31, 2019, on which EMPLOYER terminates LYTLE's retention with the PORT because LYTLE has breached any of the terms of this Agreement. The period between July 22, 2019, and the Separation Date shall be known as the "Temporary Annuitant Period". LYTLE may terminate the terms of his retention during the Temporary Annuitant Period at any time for any reason. In the event LYTLE terminates his retention during the Temporary Annuitant Period, LYTLE will be paid through the Separation Date. In the event EMPLOYER terminates LYTLE's retention with the PORT because LYTLE has breached the terms of this Agreement, LYTLE's receipt of consideration under this Agreement will immediately cease, and LYTLE will not receive any

further payments. Any disputes over whether LYTLE has committed such a breach shall be decided under the mediation and arbitration procedures set forth in Section 6 of this Agreement.

(c) **Compensation.** Subject to the hours limitations in Section 2(f), during the Temporary Annuitant Period, the PORT will pay LYTLE a rate of one hundred and ninety-three dollars and twenty one cents (\$193.21) per hour, less standard and appropriate withholdings and deductions, payable according to the PORT's standard payroll practices (currently bi-weekly). Other than the compensation provided under this Agreement, LYTLE shall not be entitled to any other compensation for services rendered during the Temporary Annuitant Period including, without limitation: bonuses, holiday or holiday pay, vacation accrual or vacation pay, service credit, or any additional retirement or other benefits given to PORT employees. Lytle's status as a Temporary Annuitant is pursuant to Government Code Section 7522.56 and Lytle shall comply with all CALPERS laws and regulations so to retain his right to receive benefits as a retiree under the Retirement Plan.

(d) **Duties.** During the Temporary Annuitant Period, LYTLE will report to the Executive Director of the PORT, and perform the Scope of Services as directed by the Executive Director, including but not limited to, transitioning LYTLE's duties to the Executive Director. LYTLE agrees he shall devote all his business time and efforts for the services of the PORT during the Temporary Annuitant Period and he shall not obtain any other employment or consulting arrangements during the Temporary Annuitant Period.

(e) **Work Location and Support.** During the Temporary Annuitant Period, LYTLE will provide services from his own provided work location and equipment unless specifically requested by the Executive Director to report to 530 Water Street, or other PORT offices or location. Nonetheless, LYTLE understands that during the Temporary Annuitant Period, he is expected to work and be available and responsive to the Executive Director or his or her designee as required to fulfill his duties, which may require him to work outside normal business hours in the location in which he resides, and may require him to regularly travel around the United States or other countries for business purposes.

(f) **Work Hours; Timesheets.** LYTLE will work and will bill the PORT for, and will be paid for, no more than 37.5 hours per week. LYTLE and the PORT understand that LYTLE is not allowed to work more than 960 hours in any PORT fiscal year (called "Maximum Hours"). Therefore, once LYTLE has worked the Maximum Hours, he will not be allowed to work or be paid for the remainder of that fiscal year. LYTLE will be required to submit bi-weekly timesheets to the Executive Director documenting all hours he has worked in the Oracle or other system as designated by the PORT. The timesheets will be used to keep track of whether LYTLE has worked the Maximum Hours, but LYTLE has no right to receive any overtime or other pay based on hours worked in excess of 7.5 hours per business day or 37.5 hours per week.

(g) **Tax Responsibility.** LYTLE understands and agrees that he is solely responsible for any taxes owed as a result of the payments under this Agreement. LYTLE further understands and agrees that the PORT has no duty to defend LYTLE against any claim or assertion that appropriate taxes were not paid and/or appropriate withholdings were not made from any payment made pursuant to this Agreement. LYTLE acknowledges and agrees that he

has not relied upon any advice whatsoever from the PORT or its counsel, as to any provision of this Agreement, or as to the taxability, whether pursuant to Federal, State, international, or local income tax statutes or regulations, or otherwise, of the payments made, action taken, or consideration transferred hereunder and that LYTLE will be solely liable for all tax obligations arising therefrom in any jurisdiction in the United States or elsewhere. LYTLE further waives, releases, forever discharges and holds the PORT harmless with respect to any claims, demands, deficiencies, penalties, levies, assessments, executions, judgments or recoveries by any entity or person against LYTLE pursuant to Federal or State tax laws or the laws of any country, for any amounts claimed due as a result of this Agreement.

(h) Reimbursement. Subject to the procedures set forth in this subparagraph, LYTLE will be reimbursed for expenses that are reasonable and necessary for his position during the Temporary Annuitant Period, and comply with all policies regarding expenses applicable to employees of the PORT. LYTLE shall submit his expenses to the Executive Director or his or her designee. All expenses for which LYTLE seeks reimbursement must be approved in advance by the Executive Director or his or her designee. Without such advance approval, LYTLE will not be entitled to reimbursement.

(i) Retirement Service Application. As soon as possible, and no later than July 12, 2019, LYTLE will provide the PORT with a copy of his retirement service application with CalPERS.

### 3. Release of Claims.

As a the condition of and for consideration given for the Temporary Post-Retirement Annuitant retention, LYTLE shall sign the "Release of Claims" attached hereto as EXHIBIT A upon the signing of this Agreement and a "Supplemental Release" attached hereto as EXHIBIT B, which is a relase of claims that may have accrued during the term of the Temporary Annuitant Period, upon the Separation Date.

### 4. LYTLE's Promises.

(a) Pursuit of Agreementd Claims. LYTLE acknowledges that he has no lawsuits, claims, or actions pending in his name, or on behalf of any other person or entity, against the PORT or any other of the Agreementd Parties. EMPLOYER acknowledges that it has no lawsuits, claims, or actions pending in its name, or on behalf of any other person or entity, against LYTLE.

(b) Confidential and Proprietary Information and PORT Property. LYTLE agrees to enter into an "Employee Nondisclosure Agreement" concurrently with the execution of this Agreement. LYTLE agrees that he will continue to comply with the terms and conditions of any confidentiality provisions to which he has already agreed, and any other applicable agreement regarding proprietary information and/or confidentiality between LYTLE and the PORT, including the terms and conditions of that Employee Nondisclosure Agreement executed on June 13, 2013.



(c) No Disparagement. LYTLE agrees not to defame or disparage the "Port of Oakland" or any of its current or former members of the Board of Port Commissioners, senior staff or employees, and will not make any statement of any kind that is calculated to, or which foreseeably will, damage the business or reputation of the "Port of Oakland" or any of the foregoing persons, or do anything that portrays any of the foregoing persons or the "Port of Oakland," its business or personnel, in a negative light.

(d) Future Cooperation. LYTLE agrees to cooperate with the PORT in the transition of his duties and work as requested by the PORT. If requested by the PORT, LYTLE agrees to make himself available and cooperate with the PORT, its counsel, or any governmental authority or officials, in connection with any claim, dispute, negotiation, investigation, administrative proceeding or litigation involving the PORT or its employees, to provide information or documents, provide declarations or statements, meet with attorneys or other representatives of the PORT, prepare for and give depositions or testimony, and/or otherwise cooperate in the investigation, defense or prosecution of any matter in which LYTLE was involved or of which he may have knowledge as a result of his employment with PORT. If the PORT requests that LYTLE make himself available for any of the above activities after the conclusion of the Temporary Annuitant Period, LYTLE agrees to do so provided the PORT reimburses him for his reasonable travel expenses (airfare, hotel and meals) and pays him a reasonable hourly fee for his time (except during the Temporary Annuitant Period when Lytle shall be compensated pursuant to Subsection 2(c)) of this Agreement), such amount to be subject to future agreement between LYTLE and the PORT.

(e) Compliance with Policies, Other Laws. LYTLE agrees that he will comply with all applicable laws and regulations in the U.S. and elsewhere that may pertain to his work as a Temporary Annuitant, and that he remains subject to the policies and guidelines applicable to PORT employees.

(f) Revolving Door Policy: Lytle hereby acknowledges and agree that he is subject to prohibitions set forth in Government Code Section 87406.3 and shall not, for a period of one year of the Retirement Date, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, the BOARD or the PORT, or any committee, subcommittee, or present member of the BOARD, or any officer or employee of the PORT, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property...

5. Arbitration. The PORT and LYTLE agree to resolve any claims they may have with each other, including any claims arising out of or relating to this Agreement or LYTLE's employment ("Arbitrable Dispute"), through one (1) day of mediation before the Judicial Arbitration & Mediation Services ("JAMS"), and if the claim(s) are not resolved, then through binding arbitration in Alameda or San Francisco County before JAMS under its Employment Arbitration Rules and Procedures, or by a judge to be mutually agreed upon. JAMS administrative fees and the fees of the mediator and the arbitrator shall be paid by the PORT. The prevailing party in any arbitration shall be entitled to recover his or its reasonable attorneys'

fees and costs. By entering into this Agreement, both the PORT and LYTLE waive any right to have any Arbitrable Dispute resolved in a court of law by a judge or jury. Arbitration shall be the exclusive remedy for any Arbitrable Dispute.

6. Miscellaneous.

(a) Entire Agreement. Except as noted herein, this Agreement (together with its Exhibits), and LYTLE's continuing obligations under any confidentiality or proprietary information agreement as referred to in Section 4(b), constitute the entire agreement between LYTLE and the PORT. This Agreement may not be modified or canceled in any manner except by a writing signed by both LYTLE and an authorized PORT official. LYTLE acknowledges that the PORT have made no representations or promises to him other than those in the Agreement. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

(b) Successors. This Agreement binds LYTLE's heirs, administrators, representatives, executors, successors, and assigns, and will inure to the benefit of the BOARD and the PORT and its respective heirs, administrators, representatives, executors, successors and assigns. This Agreement further binds the PORT's administrators, representatives, successors, and assigns, and will inure to the benefit of LYTLE and his respective heirs, administrators, representatives, executors, successors and assigns.

(c) Construction. The Parties participated jointly in the preparation of this Agreement. Each Party to this Agreement has had the opportunity to review, comment upon and redraft this Agreement. It is agreed that no rule of construction (including, but not limited to, California Civil Code Section 1654) shall apply against any Party or in favor of any Party. This Agreement shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party. This Agreement is to be enforced and governed by and under the laws of the State of California.

(d) Interpretation. Except to the extent governed by federal law, this Agreement shall be governed by the statutes and common law of the State of California (excluding any that mandate the use of another jurisdiction's law).

(e) Further Documents Or Actions. The Parties agree to take any and all actions reasonably necessary in order to effectuate the intent, and to carry out the provisions, of this Agreement, including, but not limited to, the execution and delivery of all documents, the retirement by LYTLE from the PORT.

(f) Waiver. The failure of either party to insist upon the performance of any of the terms and conditions in this Agreement, or the failure to prosecute any breach of any of the terms and conditions of this Agreement, shall not be construed thereafter as a waiver of any such terms or conditions. This entire Agreement shall remain in full force and effect as if no such forbearance or failure of performance had occurred.

(g) Captions. The captions of the Sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction and/or interpretation.

(h) Notice. Any notice or request required or desired to be given pursuant to this Agreement, shall be sufficient if made in writing and sent by first class mail, postage prepaid, or facsimile or email addressed as follows:

To:  
J. Christopher Lytle  
161 Homestead Boulevard  
Mill Valley, CA 94941

To: Port of Oakland

Attn: Executive Director  
530 Water Street  
Oakland, CA 94607

With a copy to:

PORT of Oakland  
Attn: Port Attorney  
530 Water Street  
Oakland, CA 94607

**7. Age Discrimination In Employment Act Waiver; Time to Consider; Revocation; Acknowledgments**. LYTLE acknowledges that, before signing this Agreement:

(a) LYTLE was given a period of 21 days to consider this Agreement, and to the extent that he signs this Agreement before the conclusion of that 21 day period, LYTLE acknowledges that both his election and signature were of his own volition and completely voluntary;

(b) LYTLE carefully read this Agreement;

(c) LYTLE fully understands it;

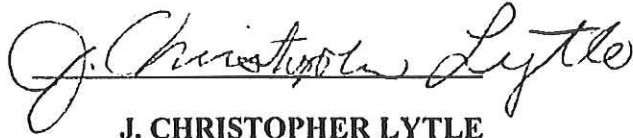
(d) LYTLE is entering into it voluntarily;

(e) LYTLE is receiving valuable consideration in exchange for his execution of this Agreement that he would not otherwise be entitled to receive; and

(f) PORT encouraged LYTLE to discuss this Agreement with his attorney before signing it (and does so here), and that he did consult with his attorney to the extent he found appropriate; and

(g) LYTLE has seven (7) days following execution of this Agreement in which to revoke this Agreement in writing. If LYTLE chooses to revoke this Agreement, he must do so by submitting his written revocation in writing via the notice provisions in Section 6(h) of the Agreement or via email or to Danny Wan, PORT of Oakland, dwan@portoakland.com.

Dated: \_\_\_\_\_



J. CHRISTOPHER LYTLE

Approved as to form and legality

This \_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF OAKLAND**, a municipal corporation acting by and through its Board of PORT Commissioners,

Dated: December \_\_\_, 2019

By \_\_\_\_\_

Title \_\_\_\_\_

Approved as to form and legality

This \_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_

PORT Attorney

## RELEASE AGREEMENT ("RELEASE")

The parties to this Release Agreement are J. Christopher Lytle ("LYTLE") and City of Oakland, acting by and through its Board of PORT Commissioners (the "PORT" or "EMPLOYER"). Capitalized terms not defined in this Release Agreement have the meanings assigned to them in the Retirement and Advisory Service Agreement between LYTLE and the Port ("Agreement" or "Agreement").

### A. Release

1. In General. Except for the rights and obligations that are specifically created by this Release Agreement, LYTLE hereby releases the PORT, its past and present affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, insurers, assigns, consultants, subcontractors, officers, directors, officials, servants, agents, employees, representatives, attorneys, Commissioners, its employee benefit plans and the trustees, fiduciaries and administrators of those plan, and any person acting under, by, through, or in concert with any of them (together "Released Parties"), and each of them (hereinafter referred to as "Released Party"), from any and all claims and causes of action he has or may have, known or unknown, suspected and unsuspected, accrued or contingent, as of the day he signs this Release Agreement, including, but not limited to, claims and causes of action arising out of or relating to LYTLE's employment or separation from employment, and specifically including, but not limited to, any claims which could have been brought in a lawsuit or grievance as well as claims that the PORT: (a) has discriminated against his on the basis of age (or any other claim or right arising under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.*), race, color, sex (including sexual harassment), national origin, ancestry, disability, religion, sexual orientation, marital status, parental status, veteran status, source of income, entitlement to benefits (including, but not limited to, entitlement to any and all leaves of absence and any reinstatement rights following such leaves), or any other status protected by local, State or Federal laws, constitutions, regulations, ordinances or executive orders; (b) has violated its personnel policies, civil service rules, handbooks or any covenant of good faith and fair dealing or breached any written or implied contract of employment between LYTLE and the PORT; (c) has violated public policy or common law, including, but not limited to, claims for: personal injury; invasion of privacy; retaliatory or wrongful discharge; whistle blowing; negligent hiring, retention or supervision; defamation; intentional or negligent infliction of emotional distress and/or mental anguish; intentional interference with contract; negligence; detrimental reliance; loss of consortium; and/or promissory estoppel; (d) is in any way obligated for any reason to pay LYTLE damages, expenses, litigation costs (including attorneys' fees), wages, bonuses, commissions, disability, retirement or welfare benefits, vacation pay and sick pay, compensatory damages, penalties, liquidated damages, punitive damages, other payments, and/or interest, except those payments specified in this Release Agreement; (e) has any obligations or owes any compensation or payments to LYTLE in connection with any ideas, information, inventions, processes, procedures, systems, methods,

intellectual property or other materials that LYTLE may have developed, produced, created, designed, modified, improved, enhanced or revised during his employment with or disclosed to the PORT; and (f) has violated any other Federal, State or local law, including but not limited to: any provision of the U.S. or state Constitutions, Title VII of the Civil Rights Act of 1964, as amended in 1991; 42 U.S.C. Section 1981; The LYTLE Retirement Income Security Act; The Americans With Disabilities Act; The Family and Medical Leave Act; The National Labor Relations Act; The Fair Credit Reporting Act; The Immigration Reform Control Act; The Occupational Safety & Health Act; the Equal Pay Act and the Equal Pay Act of 2003; The Uniformed Services Employment and Reemployment Rights Act; The Worker Adjustment and Retraining Notification Act; The LYTLE Polygraph Protection Act; California Family Rights Act; California Fair Employment and Housing Act; California Government Code; California Labor Code; the California Military and Veterans Code, California Unfair Competition Law; and any State or Federal consumer protection and/or trade practices act (together the released claims are referred to as "Claims").

2. **No litigation.** LYTLE agrees that the Agreement provides benefits to him that may be above and beyond that to which he is otherwise entitled. LYTLE represents that he has initiated no legal actions, charges or claims of any type with any local, State, or Federal agency or State or Federal court against the PORT that are currently pending. Excluded from this release are any claims which cannot be waived by law, including, but not limited to, the right to file a charge with, or participate in, an investigation conducted by the Equal Employment Opportunity Commission ("EEOC"). LYTLE is waiving, however, his right to any monetary recovery or relief should the EEOC or any other agency pursue any claims on his behalf. LYTLE further agrees that, if any agency assumes jurisdiction of any complaint, claim or action against the PORT, on his behalf, regarding his, or based upon information provided by his, that he will direct that agency to withdraw from the matter or dismiss the matter with prejudice.
3. **Unknown Claims.** LYTLE understands that he is releasing Claims that he may not know about. LYTLE acknowledges that he later may discover facts or circumstances that may give rise to Claims that he does not now know about. Nevertheless, he hereby waives any such Claims. By entering into this Release Agreement, LYTLE is expressly waiving his rights under California Civil Code Section 1542, which provides as follows:
  - i. "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

**B. Compliance with Covenants.** LYTLE agrees to comply with all other terms of the Agreement, including but not limited to the confidential information, non-disparagement and future cooperation provisions set forth in Sections 4 of the Agreement.

**C. Confidential Information; Return of PORT Property.** LYTLE agrees to maintain the confidentiality of all confidential and proprietary information of the PORT. LYTLE agrees that he will continue to comply with the terms and conditions of any confidentiality provisions to which he has already agreed, and any other applicable agreement regarding proprietary information and/or confidentiality between LYTLE and the PORT.

**D. Acknowledgements.** LYTLE acknowledges that he has read this Release Agreement and the Agreement, understands them, and has chosen to enter them freely, without coercion and based on his own judgment.

**E. Age Discrimination in Employment Act/Older Workers Benefit Protection Act Waiver; Representations.** LYTLE understands and agrees that LYTLE:

(a) Has up to twenty-one (21) calendar days within which to consider this Release Agreement before executing it, although LYTLE can sign it sooner;

(b) Has carefully read and fully understands all the provisions of this Release Agreement;

(c) Is receiving consideration under this Release Agreement beyond which LYTLE was otherwise entitled to receive;

(d) Knowingly and voluntarily agrees to all the terms set forth in this Release Agreement;

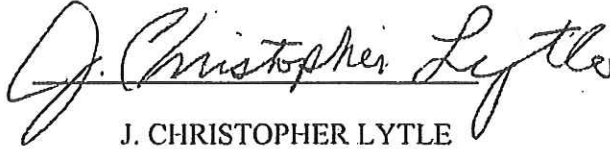
(e) Was advised and hereby is advised in writing to consider the terms of this Release Agreement and consult with LYTLE's attorney prior to executing this Release Agreement, and has done so to the extent he deems appropriate;

(f) LYTLE has seven (7) days following execution of this Release Agreement in which to revoke this Release Agreement in writing. If LYTLE chooses to revoke his age discrimination claims, he must do so by submitting his written revocation in writing via the notice provisions in Section 6(h) of the Agreement or via email or to Danny Wan, PORT of Oakland, [dwan@portoakland.com](mailto:dwan@portoakland.com).

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(g) Was advised and is advised that LYTLE's rights or claims that may arise after the date he signs this Release Agreement are not waived.

Dated: July 12, 2019



J. CHRISTOPHER LYTLE

CITY OF OAKLAND, a municipal corporation acting by and through its Board of PORT Commissioners,

Dated: \_\_, 2019

By \_\_\_\_\_

Title \_\_\_\_\_

Approved as to form and legality

This \_\_ day of \_\_\_\_\_, 2019.

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PORT Attorney