

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

1/26/2023
MCR/PCM



RESOLUTION NO. 23-01

**RESOLUTION DETERMINING THAT CONDUCTING IN-
PERSON MEETINGS OF THE BOARD OF PORT
COMMISSIONERS WOULD PRESENT IMMINENT RISKS TO
ATTENDEES' HEALTH AND SAFETY AND ELECTING TO
CONTINUE CONDUCTING MEETINGS USING
TELECONFERENCING IN ACCORDANCE WITH
CALIFORNIA GOVERNMENT CODE SECTION 54953(e) .**

WHEREAS, the Board of Port Commissioners ("Board") of the City of Oakland ("City") has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, the ongoing spread of SARS-CoV-2 and the resulting Coronavirus Disease ("COVID-19") is a pandemic posing an imminent and serious threat to health and safety of the public, the Port and its employees, customers, tenants, contractors, and other stakeholders; and

WHEREAS, on January 30, 2020, the World Health Organization declared the COVID-19 outbreak a Public Health Emergency of International Concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States; and

WHEREAS, on March 4, 2020, the Governor of the State of California ("Governor") proclaimed a State of Emergency in response to the threat posed by COVID-19 and issued various Executive Orders in response to such threat, and such declaration has not been lifted or rescinded; and

WHEREAS, on March 9, 2020, the City Administrator in his capacity as the Director of the Emergency Operations Center ("EOC"), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, on March 12, 2020, the Governor issued Executive Order N-25-20, which waived certain requirements that public meetings occur in-person and allowed public meetings to proceed through teleconference; and

WHEREAS, on March 23, 2020, the Executive Director declared an emergency determining that the COVID-19 pandemic posed a threat to the health and safety of Port employees and the safe efficient operation of critical Port operations ("Executive Director's Declaration of Emergency"); and

WHEREAS, on March 26, 2020, the Board ratified the Executive Director's Declaration of Emergency and found that the COVID-19 pandemic constituted a condition of "extreme emergency" or "emergency" for the purposes of all Board-approved policies that affect Port operations, including, without limitation, the By-Laws, the Purchasing Ordinance, the Personnel Rules and Procedures of the Port of Oakland, the Employer-Employee Relations Ordinance, and the Rules and Regulations for Oakland International Airport ("Airport Rules and Regulations"), the Meyers-Milias-Brown Act ("MMBA"), and the Charter; and

WHEREAS, on September 16, 2021, the Governor signed into law Assembly Bill 361 ("AB 361") through Executive Order N-1-22, which amended the Government Code and Education Code to provide flexibility for public agencies to conduct public meetings; and

WHEREAS, Executive Order N-1-22 made specific findings that the Omicron variant is more transmissible than prior COVID-19 variants and that requiring large numbers of individuals to travel and gather for in-person public meetings could potentially expose individuals to COVID-19, including the Omicron variant; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing difficult; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home; and

WHEREAS, at its regular meeting on September 28, 2021, the Alameda County Board of Supervisors adopted the recommendation of the Alameda County Health Care Services Agency Director for continued social distancing at all meetings of the full Board of Supervisors and at all committee meetings, with said recommendation based on the continued threat of COVID-19 to the community, the unique characteristics of public government meetings, and the continued increased safety protection provided through social distancing as one method to reduce the risk of COVID-19 transmission; and

WHEREAS, Article 7 of the Charter of the City of Oakland ("Charter") vests in the Board the exclusive control and management of the Port Department including, among other things, the complete and exclusive power to: "sue and defend in the name of the City in all actions and proceedings wherein there is involved any matters within the jurisdiction of the Board" (706(1)), "have control and jurisdiction of...the 'Port Area'" (706(4)), "expend all funds necessary to the carrying out of the powers and duties [expressed in Article 7 of the Charter]" (706(26)), and "do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any provisions of [Article 7 of the Charter]" (706(30)); and

WHEREAS, holding in-person meetings may encourage community members to come to Port facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, on September 30, 2021, October 28, 2021, January 27, 2022, February 24, 2022, March 24, 2022, April 28, 2022, May 26, 2022, June 23, 2022, July 21, 2022, September 15, 2022, October 13, 2022, November 10, 2022, December 1, 2022, and December 15, 2022 the Board passed resolutions, which contain many of the same provisions as contained herein; 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 related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the information contained herein 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 the proposed actions will not have a significant effect on the environment and therefore is not a "project" under CEQA.
- B. Based on the findings above and consistent with federal, state, and local health guidance, it has been determined that, at this time in light of the continued threat of COVID-19 to the community and to protect health and safety, conducting in-person meetings for all participants would pose imminent risks to the health and safety of attendees.
- C. The community's health and safety risks and the community's right to participate in local government are both critically important and the Port will balance these interests by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e).

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 Port.

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

At the regular meeting held on January 26, 2023
Passed by the following vote:

Ayes: Commissioners: Cluver, Colbruno, Martinez, Story and
President Lee – 5

Noes: – 0

Excused: Commissioners Butner and Leslie – 2

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

1/26/2023
Item No.: 6.2 (B)
CLF/pcm

HeP

RESOLUTION NO. 23-02

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN AMENDMENT TO A MEMORANDUM OF UNDERSTANDING WITH CITY OF OAKLAND AND ALAMEDA COUNTY TRANSPORTATION COMMISSION THAT OUTLINES ROLES AND RESPONSIBILITIES DURING CONSTRUCTION OF THE 7TH STREET GRADE SEPARATION EAST PROJECT AND FINDING THAT THE PROPOSED ACTION COMPLIES WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AS IT WAS ANALYZED IN THE 2012 ADDENDUM TO THE 2002 OAKLAND ARMY BASE AREA REDEVELOPMENT PLAN ENVIRONMENTAL IMPACT REPORT.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.2, dated January 26, 2023, 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, the Port and the Alameda County Transportation Commission ("Alameda CTC") have been working together to develop and implement a suite of freight transportation projects known as the GoPort Program ("GoPort Program"). The GoPort Program consists of three distinct projects: The Freight Intelligent Transportation System ("FITS") project; the 7th Street Grade Separation Project West; and the 7th Street Grade Separation East Project ("7th Street East Project"); and

WHEREAS, the Port, Alameda CTC, and the City of Oakland ("City") entered into that certain Memorandum of Understanding on January 24, 2020, to outline certain obligations and actions of the parties for the 7th Street East Project ("MOU"); and

WHEREAS, the MOU requires an amendment to further clarify roles and responsibilities between the three parties during the construction period for the 7th Street East 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 in testimony received, the Board finds and determines that:

A. The proposed action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). The 2002 Oakland Army Base Area ("OAB") Redevelopment Plan Environmental Impact Report ("2002 Redevelopment EIR") evaluated the potential impacts of redevelopment of the 1,800-acre redevelopment area, which included the Port locations for the FITS Project components. The EIR was certified by the lead agency, the City, in June 2002. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and the mitigation program in the City's EIR (Resolution No. 02317). In 2012, the City, in consultation with the Port, issued an Initial Study/Addendum to the Redevelopment EIR to evaluate proposed changes to the redevelopment plan. The Board approved the revised redevelopment plan and adopted the revised mitigation program on June 21, 2012 (Resolution No. 12-76). The 7th Street East Project was included in the 2002 Redevelopment EIR and the 2012 Addendum. No supplemental review is required under Section 15162 of the CEQA Guidelines.

Section 2. The Board hereby approves and authorizes the Executive Director to:

A. Enter into an amendment to the MOU, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney; and

B. Make any additions, modifications, or corrections necessary to execute the amendment to the MOU or to correct errors, subject to the limitations set forth herein, provided that any addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report, and 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 Port. 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 January 26, 2023

Passed by the following vote:

Ayes: Commissioners: Colbruno, Martinez, Story and
President Lee – 4

Noes: Commissioner Cluver – 1

Excused: Commissioners Butner and Leslie – 2

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

1/26/23
Item No.: 6.3
CLF/pcm

ncp

RESOLUTION NO. 23-03

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT WITH D-LINE CONSTRUCTORS, INC. IN AN AMOUNT NOT-TO-EXCEED \$444,666 FOR THE DEMOLITION OF BUILDING L619 AND NORTH FIELD BUNKERS (L921, L922, L923, AND L924) FOR A ONE YEAR TERM AND AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE CONTRACT CHANGE ORDERS TO THE EXTENT NECESSARY IN AN AMOUNT NOT-TO-EXCEED \$90,000 AND FINDING THAT 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 No. 6.3, dated January 26, 2023, 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 testimony received, the Board finds and determines that:

A. The proposed action to approve a contract for the demolition of Building L619 and North Field Bunkers (L921, L922, L923, and L924) ("Demolition Services") for the Port was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and CEQA Guidelines. The On-Call Crane Services are exempt under Section 15302 of CEQA because it consists solely of replacement and reconstruction of existing structures. No further environmental review is required.

B. The proposed contract for Demolition Services with D-Line Constructors, Inc. ("D-Line") will constitute an agreement for obtaining professional, technical, and specialized services that are temporary in nature and it is in the best interest of the Port to secure such services from D-Line.

Section 2. The Board hereby approves the award of a contract with D-Line for Demolition Services, in an amount not to exceed \$444,666 for a one-year term, with potential change orders to the extent necessary in an additional amount not to exceed \$90,000, as further described in the Agenda Report ("Demolition Services Contract").

Section 3. The Board hereby authorizes the Executive Director of the Port ("Executive Director") to do the following:

A. Finally resolve protests pursuant to the Port Purchasing Ordinance.

B. To execute such Demolition Services Contract with D-Line, subject to approval as to form and legality by the Port Attorney.

C. Make such additions, modifications, or corrections as necessary to issue the total maximum contract amount 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 4. 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 Port. This resolution approves and authorizes the execution of an 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.

Section 5. This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on January 26, 2023

Passed by the following vote:

Ayes: Commissioners: Cluver, Colbruno, Martinez, Story and
President Lee – 5

Noes: – 0

Excused: Commissioners Butner and Leslie – 2

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

1/26/2023
Item No.: 6.4
CLF/pcm

Hee

RESOLUTION NO. 23-04

**RESOLUTION APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO (1) ENTER INTO A CONTRACT
WITH MARINSHIP DEVELOPMENT INTEREST, LLC IN AN
AMOUNT NOT-TO-EXCEED \$2,215,625 FOR THE MIDDLE
HARBOR SANITARY SEWER LIFT STATIONS D06P AND
D10P REHABILITATION PROJECT AND (2) EXECUTE
CONTRACT CHANGE ORDERS TO THE EXTENT NECESSARY
IN AN AMOUNT NOT-TO-EXCEED \$440,000, FOR A
MAXIMUM TWO-YEAR TERM AND FINDING THAT 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 Item No. 6.4, dated January 26, 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, 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 finds and determines that the proposed action to approve a contract for the Middle Harbor Sanitary Sewer Lift Stations D06P and D10P Rehabilitation Project was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and CEQA Guidelines. The Project is exempt under Section 15302(c) of CEQA because it consists of replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. No further environmental review is required.

Section 2. The Board hereby approves the following:

A. Award of a contract for the Middle Harbor Sanitary Sewer Lift Stations D06P and D10P Rehabilitation Project ("Rehabilitation Contract") to Marinship Development Interest, LLC ("Marinship") for a maximum two-year term and a total not to exceed amount of \$2,215,625.

B. Rejection of all other bids received and direction that securities accompanying said bids shall be returned to the respective bidders.

Section 3. The Board hereby authorizes the Executive Director of the Port ("Executive Director") to do the following:

A. Finally resolve bid protests pursuant to the Port Purchasing Ordinance.

B. Enter into one (1) Contract with Marinship, in a total amount not to exceed \$2,215,625 and for a two-year maximum term; and (2) execute change orders to the extent necessary in a total amount not to exceed \$440,000.

Section 4. The Board further finds that:

A. The Chief Operating Officer or Principal Engineer of the Port is authorized to approve the project manual and plans for each instance of work performed under the Contract in advance of construction, pursuant to Government Code Section 830.6.

B. A bond for the faithful performance of the work, and a bond to guarantee the payment of all claims for labor and materials furnished and for amounts due under the Unemployment Insurance Code, in the amount of one hundred percent (100%) of the contract price shall be provided by Marinship as prescribed by applicable laws and regulations and the contract specifications.

C. The procedure prescribed by applicable laws, regulations, and the contract specifications shall be taken for the execution of said contract.

Section 5. 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 Port. 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.

Section 6. This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on January 26, 2023

Passed by the following vote:

Ayes: Commissioners: Cluver, Colbruno, Martinez, Story and
President Lee – 5

Noes: – 0

Excused: Commissioners Butner and Leslie – 2