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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 19-28

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION
OF A SETTLEMENT AGREEMENT AND PARTIAL RELEASE
WITH RESPECT TO THE BERTH 10 STORM DRAIN BOX
CULVERT SITE WITH ZURICH AMERICAN INSURANCE
COMPANY IN THE AMOUNT OF \$50,000.**

RESOLVED that the Board of Port Commissioners ("Board") hereby approves and authorizes the Executive Director to execute for and on behalf of the Board a Settlement Agreement and Partial Release With Respect to the Berth 10 Storm Drain Box Culvert Site ("Site") with Zurich American Insurance Company ("Zurich") whereby, among other matters, Zurich will pay the Port of Oakland \$50,000 concerning environmental contamination costs incurred by the Port at the Site through March 31, 2018; 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 May 9, 2019
Passed by the following vote:

Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and
President Butner – 7
Noes: 0

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 19-29

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A THIRD SUPPLEMENTAL AGREEMENT WITH THE CITY OF OAKLAND, ACTING FOR THE OAKLAND FIRE SERVICES ADMINISTRATION, TO EXTEND THE EXISTING MEMORANDUM OF UNDERSTANDING FOR AIRCRAFT RESCUE AND FIRE FIGHTING ONE YEAR THROUGH FISCAL YEAR 2020 FOR AN AMOUNT NOT TO EXCEED \$7,200,000.

WHEREAS, the City of Oakland, a municipal corporation (the "City") and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port") have entered into a Memorandum of Understanding Regarding Aircraft Rescue Fire Fighting Services at the Metropolitan Oakland International Airport (as amended, the "MOU"); and

WHEREAS, the MOU will expire on June 30, 2019; and

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 6.1 dated May 9, 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; now, therefore be it

RESOLVED, 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 be it

FURTHER RESOLVED, that the Board hereby authorizes the Executive Director to execute a Third Supplemental Agreement with the City, acting for the Oakland Fire Services Administration, to extend the MOU for one year to June 30, 2020 for an amount not to exceed \$7,200,000, subject to approval by the Port Attorney as to form and legality; and be it

FURTHER RESOLVED, that the Board determines and finds that this project is categorically exempt from California Environmental Quality Act ("CEQA") 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 topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination; and be it

FURTHER RESOLVED, that this resolution is not evidence of and does not create or constitute (a) a contract(s), or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. 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 May 9, 2019

Passed by the following vote:

Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner – 7

Noes: 0



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 19-30

**RESOLUTION APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO ENTER INTO AN
EXCLUSIVE NEGOTIATING AGREEMENT WITH
EAGLE ROCK AGGREGATES, INC. FOR THE
DEVELOPMENT AND LEASE OF A BULK SAND AND
AGGREGATE MARINE TERMINAL AT BERTHS 20-22,
WITH A NON-REFUNDABLE FEE UP TO \$500,000.**

WHEREAS, the Board of Port Commissioners ("**Board**") has reviewed and evaluated Agenda Report Item 6.3 dated May 9, 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, 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. The Board hereby finds and determines as follows:

A. The Port owns the submerged lands, berthing areas, and docks related to Berths 20-22 and approximately 20 acres of the uplands adjacent to the docks at Berths 20-22 (the "**Proposed Premises**"); and

B. The Port currently uses the Proposed Premises for ancillary maritime purposes, but the Proposed Premises are not currently being rented by or to a maritime terminal operator; and

C. Eagle Rock Aggregates, Inc. ("**Eagle Rock**") is a wholly-owned subsidiary of U.S. Concrete, Inc., and Eagle Rock currently imports sand and aggregates for the local San Francisco Bay Area regional construction market from British Columbia, Canada at a smaller marine bulk terminal located in Richmond, California. The imported sand and aggregate are used primarily in ready-mix concrete plants for construction projects in the San Francisco Bay region, including the City of Oakland; and

D. Eagle Rock wishes to expand its operations and has approached Port staff about the possibility of leasing the Proposed Premises for an initial lease term up to fifteen (15) years and for the development and operation of a maritime bulk terminal for the import, export, and distribution of imported sand and aggregate in bulk; and

E. Port staff now propose entering into an exclusive negotiating agreement ("ENA") with Eagle Rock under the following key terms and conditions:

(i) **Term of ENA:** Eleven (11) months, effective May 10, 2019. Eagle Rock and the Port may agree in writing to extend the term of the ENA by an additional 3 months if both parties have reached substantial agreement on the material terms of a Non-Exclusive Preferential Assignment Agreement ("NEPAA") by March 31, 2020.

(ii) **Proposed Premises:** The proposed premises consists of Berths 20-22 and approximately 20 acres of Berth 20, 21, and 22 backlands.

(iii) **Termination Rights:** Either party may terminate with 30 days' written notice to the other 6 months after the effective date of the ENA.

(iv) **Access to Proposed Premises:** The Port will grant Eagle Rock rights of access to the Proposed Premises during normal business hours to perform non-invasive investigation as part of their due diligence. If Eagle Rock wishes to perform any invasive investigation (e.g., below ground), Eagle Rock will have to obtain the Port's prior written permission.

(v) **Consideration:** Eagle Rock will pay the Port a non-refundable monthly fee of \$20,833.33 per month for each month the ENA is in effect up to a maximum of \$250,000. If the parties reach substantial agreement on the terms of a NEPAA prior to the expiration of the ENA, Eagle Rock will pay the Port an additional one-time, non-refundable fee of \$250,000 as a condition precedent to the Port's duty to calendar the proposed lease for the Board's consideration.

(vi) **Port's Right to Continue Using the Proposed Premises:** The Port will retain the right to continue to use and lease the Proposed Premises on a month-to-month basis during the term of the ENA. Currently, the backland land area is being used for ancillary maritime purposes, and Berth 22 is used as a "flex berth" for the temporary berthing of vessels or use by other container terminals on an as-needed basis.

(vii) **Due Diligence:** During the ENA, Eagle Rock and the Port will conduct due diligence into proposed Lessee's

environmental law compliance matters and requirements with respect to the Proposed Premises.

Section 2. The Board hereby:

A. Approves the proposed ENA with Eagle Rock as described hereinabove and in the Agenda Report; and

B. Authorizes the Executive Director to (i) execute the ENA, subject to approval as to form and legality by the Port Attorney, and (ii) make such minor additions, modifications, or corrections as necessary to implement the ENA 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. The proposed approval of the ENA was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port CEQA Guidelines. The proposed approval is exempt from CEQA requirements pursuant to CEQA Guidelines, Article 19, Section 15061(b)(3) which refers to the general rule that where it can be seen with certainty that there is no possibility that the proposed action may have a significant effect on the environment, the proposed action is not subject to CEQA. As the proposed approval of the ENA commits the Port and **Eagle Rock** to a limited period of exclusive negotiations on the Proposed Premises and does not include the approval of any project for the site nor any change in land use, the proposed ENA approval is not subject to CEQA. If the proposed ENA is approved, the Port and Eagle Rock will each use good faith efforts to negotiate and agree on a project scope which will serve as a basis for environmental review pursuant to CEQA.

Section 4. This resolution is not evidence of and does not or constitute (a) a contract, or 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 the other contracting party, there shall be no valid or effective agreement.

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

At the regular meeting held on May 9, 2019

Passed by the following vote:

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

Recused: Commissioner Colbruno - 1

Noes: 0

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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 19-31

**RESOLUTION APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO AMEND THE AGREEMENT
WITH ELATION SYSTEMS, INC. FOR THE
WEB-BASED LABOR COMPLIANCE / WORKFORCE
TRACKING SYSTEM AND LIVING WAGE COMPLIANCE
SYSTEM TO ADD AN ADDITIONAL ONE-YEAR OPTION
TERM AND INCREASE THE AMOUNT NOT TO EXCEED
BY \$63,000.00.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.5, dated May 9, 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. Elation Systems, Inc. is party to a Professional Services Agreement dated May 15, 2017 ("Agreement") to provide a web-based labor compliance / workforce tracking system and living wage compliance system for a period of two years with a one-year renewal option for a total amount not to exceed \$148,000.00; and

B. 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 there is no possibility that entering into the requested agreement will result in a significant effect on the environment and therefore is not subject to CEQA.

Section 2. The Board hereby approves and authorizes the Executive Director to amend the Agreement with **Elation Systems, Inc.** for the

web-based compliance / workforce tracking system and living wage compliance system to add an additional one-year option term and to increase the total cost of the agreement by \$63,000.00, 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 May 9, 2019

Passed by the following vote:

Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner – 7

Noes: 0