

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

9/30/2021
Item No.: CS
CT/msr



RESOLUTION NO. 21-59

RESOLUTION APPROVING AND AUTHORIZING A
SETTLEMENT AGREEMENT SETTLING ALL CLAIMS BY THE
PORT OF OAKLAND AGAINST KAISERAIR, INC., FOR
UNPAID FUEL FLOWAGE FEES, LANDING FEES,
DELINQUENCY FEES, AND AUDIT COSTS FOR THE
PERIOD JANUARY 1, 2015, THROUGH JUNE 30, 2018,
IN THE NET PAYMENT AMOUNT OF \$174,576.74, TO
THE PORT OF OAKLAND BY KAISERAIR, INC.

WHEREAS, a dispute arose between the Port of Oakland ("Port") and KaiserAir, Inc. ("KaiserAir") relating to (i) a Fuel Flowage Audit for the period January 1, 2015, through June 30, 2018, and (ii) a Landing Fee Audit for the period January 1, 2015, through June 30, 2018; 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, any and all settlement and release documents for the Port's claims against KaiserAir in the net settlement amount of \$174,576.74, to be paid to the Port for unpaid fuel flowage fees, landing fees, delinquency fees, and audit costs due from KaiserAir covering the period January 1, 2015, through June 30, 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 Port. This resolution approves and authorizes the execution of a settlement 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 other contracting party, 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 September 30, 2021
Passed by the following vote:

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

Noes: – 0



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 21-60

RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, AUTHORIZING THE PUBLICATION OF NOTICE AND THE HOLDING OF A PUBLIC HEARING PURSUANT TO SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, IN CONNECTION WITH THE POTENTIAL FINANCING AND REFINANCING OF VARIOUS PORT CAPITAL IMPROVEMENTS.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report dated September 30, 2021, Item No. 2.3 ("Agenda Report") and related materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, the City of Oakland ("City"), State of California, is a chartered city duly organized and existing under and pursuant to the provisions of the Constitution of the State of California and the Charter of the City ("Charter"); and

WHEREAS, the Board is a duly constituted department of the City and has exclusive control, management, supervision, and jurisdiction of the Port Department of the City, the Port of Oakland, and the Port Area of the City, and is the governing body of said Port Department, Port of Oakland, and Port Area, all as provided for and defined in Article VII of the Charter; and

WHEREAS, the Board intends to issue certain Refunding Revenue Bonds, Revenue Bonds and/or Commercial Paper Notes (collectively, the "Obligations") pursuant to Article VII of the Charter, to provide financing for various elements of the Port's capital program; and

WHEREAS, certain of the Obligations are expected to constitute tax-exempt "private activity bonds" subject to Section 147(f) of the Internal Revenue Code of 1986, as amended ("Code"), the issuance of which Obligations must be approved by a qualifying elected representative of the issuing governmental unit after a public hearing following reasonable public notice; and

WHEREAS, the Board now wishes to authorize and approve such public hearing and notice; now, therefore be it

RESOLVED, by the Board of Port Commissioners of the City of Oakland:

Section 1. CEQA. The proposal to advertise and conduct a public hearing on proposed debt obligations, and on potential improvements to be financed was reviewed in accordance with the requirements of the

California Environmental Quality Act ("CEQA"). The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that conducting a public hearing and associated actions related to Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") requirements will result in a physical change in the environment, and therefore they are not subject to CEQA and no further environmental review is required. Appropriate CEQA review will be conducted prior to Board approval of any specific projects that may be undertaken with Port bonds. Therefore, this action is not subject to CEQA and no further environmental review is required.

Section 2. Public Hearing. The holding of a public hearing with respect to the Obligations required by Section 147(f) of the Code is hereby authorized and approved. The Chief Financial Officer, Manager of Financing Planning or any one of them (collectively, the "Authorized Officers") are hereby authorized and directed to oversee and conduct the public hearing on such date as they may determine and, thereafter, to forward to the Mayor of the City a summary of such hearing, with a request that she, or her designee, approve the issuance of the Obligations as the City's chief elected representative in accordance with Section 147(f) of the Code.

Section 3. Publication of Notice. Each of the Authorized Officers is hereby authorized and directed to cause a notice of the public hearing to be published, in accordance with Section 147(f) of the Code, in the manner as they deem appropriate, and in such form as they shall approve, at least seven (7) calendar days prior to the proposed public hearing date.

Section 4. Effective Date of Resolution. This Resolution shall take effect from and after its passage and approval.

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 September 30, 2021

Passed by the following vote:

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

Noes: – 0



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 21-61

RESOLUTION: 1) APPROVING THE ADDITION OF THE WEST OAKLAND ENVIRONMENTAL INDICATORS PROJECT PRESCOTT GREENING/LIVING BUFFER PROJECT TO THE SEAPORT AIR QUALITY 2020 AND BEYOND PLAN ("2020 AND BEYOND PLAN") AS A RELATED PROJECT; 2) ADDING THE FOLLOWING TWO NEW IMPLEMENTING ACTIONS TO THE NEAR TERM ACTION PLAN IN THE 2020 AND BEYOND PLAN: A) REQUIRING CLEANER DREDGE ENGINES; AND B) SUPPORTING HYDROGEN FUEL CELL DEMONSTRATION PROJECT; AND 3) ALLOCATING \$10,000 IN SUPPORT OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S EXISTING VESSEL SPEED REDUCTIONS PROGRAM.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated Agenda Report Item 5.2, dated September 30, 2021, 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; and

WHEREAS, the Prescott Greening/Living Buffer Project envisions a design effort on the western perimeter of the West Oakland residential neighborhood to address air quality, dust, noise, and water quality issues related to industrial uses and transportation, uses such as regional freeways, rail and railyard operations, Seaport operations, and local industries; and

WHEREAS, the Seaport Air Quality 2020 and Beyond Plan: Annual Report ("Annual Report"), dated September 30, 2021, updated the Board on the Port's progress towards achieving its vision of a zero-emissions Seaport and included updates on the stakeholder consultation process that resulted in the recommendations to add two new Implementing Actions to the Near Term Action Plan ("NTAP") namely: 1) Require Cleaner Dredging; and 2) Support Hydrogen Fuel Cell Demonstration Project; and

WHEREAS, as a trustee managing submerged lands and tidelands on behalf of the People of the State of California, Port funds are held subject to the common law public trust exclusively for statewide public trust purposes such as maritime commerce, navigation, and fisheries. The National Oceanic and Atmospheric Administration's ("NOAA") existing Vessel Speed Reduction known as "Protecting Blue Whales and Blue Skies" allocation is consistent with the public trust because these funds will be used to improve the performance of ships and tugs engaged in maritime commerce;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Board approved the 2020 and Beyond Plan on June 13, 2019, and made determinations under the California Environmental Quality Act ("CEQA") at that time. The proposed additions to the 2020 and Beyond Plan and funding NOAA's existing Vessel Speed Reduction Program have been determined to be exempt from the CEQA Guidelines pursuant to Section 15061(b)(3) of the CEQA Guidelines, which states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. Adding the Prescott Greening/Living Buffer as a related project, adding two Implementing Actions to the NTAP, and allocating \$10,000 to support NOAA's existing Vessel Speed Reduction Program will not result in physical changes to the environment, and therefore these actions are not subject to CEQA and no further environmental review is required.

Section 2. The Board hereby:

- A. Revises the 2020 and Beyond Plan "Related Projects" Table to add the Prescott Greening/Living Buffer project; and
- B. Adds two Implementing Actions to the NTAP as follows: 1) NTAP #40: Require Clean Dredge Engines; and 2) NTAP #41: Support Hydrogen Fuel Cell Demonstration Project; and
- C. Supports the NOAA existing Vessel Speed Reduction program known as "Protecting Blue Whales and Blue Skies" by allocating \$10,000 in FY 2022 to support communications and outreach efforts; and
- D. Authorizes the Executive Director to (i) execute an agreement with NOAA to grant \$10,000 to the existing Vessel Speed Reduction program, subject to approval as to form and legality by the Port Attorney, and (ii) make any additions, modifications, or corrections as necessary to implement the agreement provided that any addition, modification, or correction does not materially differ from the terms and conditions set forth in this Resolution and in the Agenda Report, subject to approval 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 an agreement(s) in accordance with the terms of this resolution. Unless and until a separate written agreement(s) is duly executed on behalf of the Board as authorized by this resolution, is signed and approved as to form and legality by the Port Attorney, and is delivered to the contracting party, there shall be no valid or effective agreement(s).

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

At the regular meeting held on September 30, 2021

Passed by the following vote:

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

Noes: – 0



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 21-62

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE PROFESSIONAL SERVICES AGREEMENT WITH (1) ARTHUR D. LITTLE INC. FOR A FIVE YEAR TERM IN AN AMOUNT NOT TO EXCEED \$600,000 AND (2) THE ROUTE HUNTERS FOR A FIVE YEAR TERM IN AN AMOUNT NOT TO EXCEED \$150,000, BOTH FOR AIR SERVICE DEVELOPMENT CONSULTING SERVICES AT OAKLAND INTERNATIONAL AIRPORT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated Agenda Report Item 6.1 dated September 30, 2021, 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. Based upon the information contained in the Agenda Report, the Board hereby finds and determines that:

A. The proposed action to enter into Professional Services Agreements ("Agreements") with Arthur D. Little Inc. ("Little") and The Route Hunters ("TRH") was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that entering into the Agreements with these consultants will not result in a physical change in the environment, and therefore, this action is not subject to CEQA and no further environmental review is required.

B. The proposed Agreements with Little and TRH for air service development consulting services (the "Services") each 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 secure these Services from Little and TRH.

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

A. Execute for and on behalf of the Board an Agreement with Little, upon terms and consideration consistent with the Agenda Report and providing that Little shall be compensated to perform the Services in an amount not to exceed \$600,000 over a contract period of five (5) years. Execution of the Agreement is subject to approval as to form and legality by the Port Attorney; and

B. Execute for and on behalf of the Board an Agreement with TRH, upon terms and consideration consistent with the Agenda Report and providing that TRH shall be compensated to perform the Services in an amount not to exceed \$150,000 over a contract period of five (5) years. Execution of the Agreement is subject to approval as to form and legality by the Port Attorney; and

C. Make any additions, modifications, or corrections necessary to issue the Agreements 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 an agreement(s) in accordance with the terms of this resolution. Unless and until a separate written agreement(s) is duly executed on behalf of the Board as authorized by this resolution, is signed and approved as to form and legality by the Port Attorney, and is delivered to the contracting party, there shall be no valid or effective agreement(s).

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

At the regular meeting held on September 30, 2021

Passed by the following vote:

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

Noes: – 0

MA

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 21-63

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH CHEN DESIGN ASSOCIATES, INC. IN AN AMOUNT NOT TO EXCEED \$2,250,000 FOR A THREE YEAR TERM WITH TWO, ONE-YEAR OPTIONS TO EXTEND FOR CREATIVE ADVERTISING AND DESIGN SERVICES AT OAKLAND INTERNATIONAL AIRPORT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated Agenda Report Item 6.2 dated September 30, 2021, 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. Based upon the information contained in the Agenda Report, the Board hereby finds and determines that:

A. The proposed action to enter into a Professional Services Agreement ("Agreement") with Chen Design Associates, Inc. ("CDA") was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that entering into the Agreement with CDA will not result in a physical change in the environment, and therefore, this action is not subject to CEQA and no further environmental review is required.

B. The proposed Agreement with CDA for creative advertising and design services (the "Services") constitutes 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 secure these Services from CDA.

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

A. Execute for and on behalf of the Board an Agreement with CDA, upon terms and consideration consistent with the Agenda Report and providing that CDA shall be compensated to perform the Services in an amount not to exceed \$2,250,000 for an initial contract term of three (3) years with two (2) one-year options to extend. Execution of the Agreement is subject to approval as to form and legality by the Port Attorney; and

B. Make any additions, modifications, or corrections necessary to issue the Agreement 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 an agreement(s) in accordance with the terms of this resolution. Unless and until a separate written agreement(s) is duly executed on behalf of the Board as authorized by this resolution, is signed and approved as to form and legality by the Port Attorney, and is delivered to the contracting party, there shall be no valid or effective agreement(s).

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

At the regular meeting held on September 30, 2021

Passed by the following vote:

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

Noes: – 0



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 21-64

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO AMEND THE EXISTING CONTRACT WITH TURNER CONSTRUCTION COMPANY, INC. TO ADD PRIME CONTRACTOR SERVICES TO REPLACE THE TERMINAL 2 ROOF DRAINAGE SYSTEM AT OAKLAND INTERNATIONAL AIRPORT FOR A GUARANTEED MAXIMUM PRICE NOT TO EXCEED \$1,433,000.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report Item 6.4 dated September 30, 2021, ("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 ("Turner Contract"); and

WHEREAS, the Turner 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, 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 the proposed action to amend the Turner Contract was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the CEQA Guidelines. The proposed action 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 facilities 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 approves and authorizes the Executive Director of the Port ("Executive Director") to:

- A. Amend the Turner Contract to add Construction Manager at Risk Construction Services ("Amendment") to construct the Building M-130 Roof Drain Replacement for a guaranteed maximum price not to exceed \$1,433,000; and
- B. Make any additions, modifications, or corrections necessary to issue the Amendment 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 September 30, 2021
Passed by the following vote:

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

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

09/30/2021
Item No.: 6.7
EJP/msr



RESOLUTION NO. 21-65

**RESOLUTION SUPPORTING THE RAISING OF THE
UNITED NATIONS FLAG ON THE UNITED NATIONS
FLAG POLE AT JACK LONDON SQUARE AND
COMMENDING THE UNITED NATIONS ASSOCIATION -
USA, EAST BAY CHAPTER.**

WHEREAS, the Port of Oakland recognizes the key role of international trade in maintaining peaceful relations and prosperity among the peoples of all nations; and

WHEREAS, the Port of Oakland collaborates with the City of Oakland and the Oakland Public Schools to support the Flag of Nations and United Nations Flag Raising to commemorate the founding of the United Nations on October 24, 1945; and

WHEREAS, since the original 50 member states adopted the Charter of the United Nations in 1945, the number of United Nations member states has increased to over 190; and

WHEREAS, in 1966, the Board of Port Commissioners of the City of Oakland passed Resolution No. 16745 permitting the United Nations Flag to be flown in Jack London Square; and

WHEREAS, the Port of Oakland supports the **55th Annual United Nations Parade of Flags on Sunday, October 10, 2021;**

NOW, THEREFORE, BE IT RESOLVED, that the Board of Port Commissioners of the City of Oakland hereby commends the United Nations Association - USA (UNA-USA), East Bay Chapter for advocating, educating, and collaborating about the commemoration of United Nations Day. The UNA-USA, East Bay Chapter has kept its commitment to the partnership with the Port of Oakland, the City of Oakland, the JROTC of the Oakland Public Schools, and the Oakland Friends of the United Nations, to support the Flag Parade and the United Nations Flag Raising Ceremony at the United Nations Flag Pole in Jack London Square.

At the regular meeting held on September 30, 2021

Passed by the following vote:

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

Noes: – 0



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 21-66

**RESOLUTION DETERMINING THAT CONDUCTING IN-
PERSON MEETINGS OF THE BOARD OF PORT
COMMISSIONERS WOULD PRESENT IMMINENT RISKS
TO ATTENDEES' HEALTH, AND ELECTING TO
CONTINUE CONDUCTING MEETINGS USING
TELECONFERENCING IN ACCORDANCE WITH
CALIFORNIA GOVERNMENT CODE SECTION
54953(e), A PROVISION OF AB-361.**

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 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 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, the Centers for Disease Control ("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 hard; 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, 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;

WHEREAS, currently, the Port's facilities for public meetings do not have the technological capability for members of the public to attend via teleconference or remote at the same time that the Board and Port staff are physically located in the Board meeting room, which would restrict the ability of older individuals, individuals with COVID-19 symptoms, and unvaccinated individuals to fully participate in Board meetings, including offering public comment on items of interest to those individuals; 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 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 conducting in-person meetings would pose imminent risks to the health of certain attendees who may not be able to fully participate in the Board meetings remotely if the Board and Port staff meet in person given the Port's current technological capability.
- 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), a provision of California Assembly Bill 361 ("AB 361").

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

At the regular meeting held on September 30, 2021

Passed by the following vote:

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

Noes: – 0